

**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. 65/SB/2014

Rajesh Gill, S/o Shri Telu Ram, Presently posted as Dy. Commissioner
(Commercial Tax), Commercial Tax Department, Uttarakhand, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Department of Finance, Government of Uttarakhand, Secretariat, Dehradun.
2. Secretary, Finance Department-8, Civil Secretariat, Subhash Road, Dehradun.
3. Commissioner, Commercial Tax Department, Uttarakhand, Raipur Bye-pass, Pulia No. 6, Raipur, Dehradun.

.....Respondents

Present: Sri Jugal Tiwari, Counsel,
for the petitioner

Sri U.C.Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: FEBRUARY 04, 2016

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

1. The petitioner has filed this claim petition for seeking the following relief:

“(i) To set aside the impugned order dated 13.12.2013 passed by Secretary Finance, State of Uttarakhand (Annexure No. A-

01) and order dated 03 April 2014 (Annexure: A-02) of the State Govt. rejecting the representation.

(ii) Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iii) Award the cost of the petition."

2. The relevant facts in brief are that the petitioner is a Deputy Commissioner in the Commercial Taxes Department of the Government of Uttarakhand. When he was posted in Dehradun, he was assigned the task to file Special Leave Petition in the Supreme Court on 04.07.2012 in the matter related to a firm known as 'Sarva Shri Sagar Sons', Dehradun. The petitioner was transferred from Dehradun to Haridwar on 31.07.2012. The petitioner handed over the charge to the new Deputy Commissioner, Dehradun on 21.08.2012.

3. The 'charge note' signed by both the Deputy Commissioners is shown as Annexure: A4 to the claim petition. On page 2 of the 'charge note', the matter related to 'Sarva Shri Sagar Sons' has also been mentioned as under:

“माननीय सर्वोच्च न्यायालय सम्बन्धित कार्य/नोट

1- सर्वश्री सागर संस 24 ओल्ड कनाट पैलेस देहरादून के मामले में याचिका संख्या 17820/12 एवं 15208/12 के सम्बन्ध में मुख्यालय के पत्र संख्या 1281 दिनांक 21-6-2012 के अनुपालन में प्रस्तरवार नेरेटिव आख्या-भेजी जानी है।

नोट- उक्त मामलें में मेरे द्वारा कार्यवाही प्रारम्भ करते हुए हिन्दी से अग्रेजी अनुवाद करवाते हुए 20 बिन्दु तक आख्या तैयार कराई जा चुकी है। शेष प्रस्तरों के सम्बन्ध में प्राथमिकता पर कार्यवाही की जानी शेष है।”

4. The 'Advocate on Record' of Government of Uttarakhand in the Supreme Court requested to the Principal Secretary, Finance, Government of Uttarakhand on 16.01.2013 to execute 'Vakalatnama' in her favour to take further action in the matter. Thereafter, the

Finance Department of the State Government asked the Commissioner, Commercial Taxes to take necessary action. The Deputy Commissioner (Shri Praveen Kumar), Dehradun inquired about the 'Vakalatnama' from Deputy Commissioner, Haridwar (Shri Rajesh Gill, the petitioner) on 07.03.2013 and the petitioner replied to him on 18.03.2013 that he had not contacted the 'Advocate on Record' and requested to the Deputy Commissioner, Dehradun to take further action at his level. As the original 'Vakalatnama' was not found to be available, another 'Vakalatnama' was arranged by the Government/Commissioner and sent to the 'Advocate on Record' to take further action in the matter on 28.03.2013.

5. The Government, taking cognizance of the delay in providing Vakalatnama, asked the Commissioner, Commercial Taxes on 02.04.2013 to fix the responsibility of the concerned officer. The Commissioner, Commercial Taxes sought an explanation of the Deputy Commissioner, Haridwar (Shri Rajesh Gill, the petitioner) on 06.04.2013 to explain as to why 'Vakalatnama' was not filed. The petitioner submitted his explanation in detail on 18.05.2013 and his main contention was that the 'Vakalatnama' was on the file when he handed over charge to the Deputy Commissioner, Dehradun (Shri Praveen Kumar) and he is not responsible for the delay in the filing of Vakalatnama or for the non-availability of the 'Vakalatnama' on the file.

6. Thereafter, the Commissioner, Commercial Taxes directed the Additional Commissioner, Commercial Taxes on 29.06.2013 to inquire into the matter and find out in whose period (Shri Praveen Kumar or Shri Rajesh Gill) of posting, the 'Vakalatnama' was lost (Annexure: A5). The Commissioner also provided explanation of Shri Rajesh Gill (the petitioner) dated 18.05.2013 to the Additional Commissioner alongwith letter dated 29.06.2013.

7. Additional Commissioner inquired into the matter. He sought explanation of the Deputy Commissioner (Shri Praveen Kumar) and also considered the explanation of Shri Rajesh Gill, the petitioner dated 18.05.2013 as mentioned in paragraph 5 above and submitted his report to the Commissioner on 26.07.2013. The conclusion of the findings is reproduced below:

“मन्तव्य / जांच निष्कर्ष

मेरे द्वारा सन्दर्भित मामले में शासन से प्राप्त एडवोकेट ऑन रिकार्ड से सम्बन्धित मूल वकालतनामा खो जाने के सम्बन्ध में श्री राजेश गिल डिप्टी कमिश्नर, (प्रवर्तन) वाणिज्य कर, हरिद्वार तत्कालीन डिप्टी कमिश्नर (क0-नि0)-1, वाणिज्य कर देहरादून एवं श्री प्रवीण कुमार गुप्ता, डिप्टी कमिश्नर(क0-नि0)-1, वाणिज्य कर देहरादून से प्राप्त स्पष्टीकरणों, पत्राचार से सम्बन्धित पत्रों, चार्ज नोट एवं परस्थितिजन्य साक्ष्यों का अवलोकन किया गया एवं पाया गया कि शासन से प्राप्त एडवोकेट ऑन रिकार्ड से सम्बन्धित मूल वकालतनामा तत्कालीन डिप्टी कमिश्नर(क0-नि0)1, वाणिज्य कर, देहरादून श्री राजेश गिल को दिया गया था इसमें कोई विवाद नहीं है। श्री राजेश गिल का यह अभिलिखित कथन है कि उनके द्वारा सर्वश्री सागर सन्स की फाईल व्यक्तिगत रूप से श्री प्रवीण गुप्ता को प्राप्त करवाई गयी थी, उस समय तक मूल वकालतनामा आदि पत्रावली पर मौजूद था जिसका सत्यापन संलग्न चार्ज नोट से समर्थित है। किन्तु श्री गिल द्वारा श्री प्रवीण कुमार गुप्ता को दिये गये चार्ज नोट में सिर्फ यह लिखा गया है कि “सर्वश्री सागर सन्स 24 ओल्ड कर्नॉट पैलेस देहरादून के मामले में याचिका सं0 17820/12 एवं 15208 /12 के सम्बन्ध में मुख्यालय के पत्र सं0-1281 दिनांक 21.06.2012 के अनुपालन में प्रस्तरवार नैरेटिव आख्या भेजी जानी है।” इस चार्ज नोट में व्यापारी की पत्रावली एवं मूल वकालतनामा को प्राप्त कराये जाने का कोई प्रमाण नहीं है एवं न ही श्री राजेश गिल द्वारा अपने स्पष्टीकरण में कोई ऐसा प्रमाण प्रस्तुत किया गया है जिससे यह प्रमाणित होता हो कि पत्रावली एवं मूल वकालतनामा श्री प्रवीण कुमार को प्राप्त कराया गया हो।

यद्यपि श्री राजेश गिल द्वारा मामले की महत्ता को देखते हुए कार्यवाही हेतु चार्ज नोट में लिखे जाने के बावजूद श्री प्रवीण कुमार गुप्ता द्वारा अत्यधिक विलम्ब से मामले में प्रतिवाद किये जाने हेतु कार्यवाही की गयी।

श्री प्रवीण कुमार डिप्टी कमिश्नर (क0नि0)-1, वाणिज्य कर देहरादून द्वारा प्रेषित पत्र सं0 496, दिनांक 27.02.2013 एवं पत्र सं0 530, दिनांक 07.03.2013 से श्री राजेश गिल को वकालतनामे की मूल प्रति के संबंध में अवगत

कराने हेतु लिखा गया था, जिसके प्रतिउत्तर में श्री गिल द्वारा वकालतनामे के सम्बन्ध में कोई तथ्य अभिलिखित न करते हुए यह लिखा गया है कि“ आपको सूचित करना है कि मेरे द्वारा उक्त वाद में माननीय उच्चतम न्यायालय से एवं सम्बन्धित अधिवक्ता से कोई सम्पर्क नहीं किया गया है। कृपया अपने स्तर से कार्यवाही पूर्ण करने का कष्ट करें।”

अतः यह प्रमाणित नहीं होता है कि श्री राजेश गिल द्वारा चार्ज में अलग से व्यापारी की पत्रावली व मूल वकालतनामा श्री प्रवीण कुमार गुप्ता को प्राप्त कराया गया था। श्री गिल द्वारा चार्ज नोट में प्रस्तरवार नैरेटिव आख्या भेजे जाने हेतु लिखा गया है। कार्यालय में कार्यरत प्राप्ति-प्रेषण लिपिक पूजा कण्डवाल द्वारा लिखित रूप में बताया गया है कि मूल वकालतनामा श्री गिल को प्राप्त कराया गया था। इसी प्रकार मामले से सम्बन्धित पत्रावली श्री प्रवीण कुमार गुप्ता डिप्टी कमिश्नर (क0-नि0)-1, देहरादून को कार्यालय में तैनात खातापालक श्री बीरेन्द्र रावत द्वारा प्राप्त कराए जाने के साक्ष्य स्वरूप श्री बीरेन्द्र रावत खातापालक द्वारा दिया गया पत्र संख्या 159/दिनांक 17.7.2013 मेरे समक्ष प्रस्तुत किया गया है। अतः स्पष्ट है कि इतने महत्वपूर्ण मामले में श्री गिल द्वारा पत्रावली व मूल वकालतनामे को अलग से चार्ज में भी श्री प्रवीण कुमार गुप्ता को प्राप्त नहीं कराया गया है किन्तु जहां तक मूल वकालतनामों के खोने का प्रश्न है उपरोक्त विवेचन से यह स्पष्ट है कि श्री गिल द्वारा मूल वकालतनामों को श्री प्रवीण कुमार गुप्ता को चार्ज में दिये जाने का कोई प्रमाण नहीं दिया है।”

8. The Commissioner forwarded the inquiry report of the Additional Commissioner to the Secretary, Finance, Government of Uttarakhand on 20.08.2013.

9. Thereafter, the Secretary, Finance, Government of Uttarakhand passed the order dated 13.12.2013 (Annexure: A1) which is reproduced below:

“उत्तराखण्ड शासन

वित्त अनुभाग-8

संख्या / 2013/37(110)XXVII(8)/2012

देहरादून: दिनांक 13 दिसम्बर, 2013

कार्यालय-ज्ञाप

मा0 सर्वोच्च न्यायालय में विशेष अनुज्ञा याचिका सं0 17820/12 एवं 15208/12, सर्वश्री सागर सन्स बनाम आयुक्त, कर दाखिल किये जाने के निमित्त वित्त विभाग के पत्र सं0 588/2012/37(110)/XXXVII(8)/12, दिनांक 29.06.2012 द्वारा सुश्री रचना श्रीवास्तव, एडवोकेट- ऑन-रिकार्ड, मा0 सर्वोच्च न्यायालय,

नई दिल्ली के नाम वकालतनामा मूल रूप में प्रेषित करते हुए प्रतिवाद की कार्यवाही किये जाने की अपेक्षा की गयी थी। तदकम में आयुक्त कर द्वारा अपने पत्र सं०-1470/आयु०क०उत्तरा०/वाणि०क०/वाद-अनुभाग/देहरादून/2012-2013, दिनांक 4.7.2012 द्वारा संदर्भगत वाद में मा० सर्वोच्च न्यायालय में विशेष अनुज्ञा याचिका दाखिल किये जाने हेतु श्री राजेश गिल, डिप्टी कमिश्नर (क०नि०)-प्रथम, वाणिज्य कर, देहरादून को नामित किया गया।

2- उक्त संदर्भ में श्री पीयूष कुमार, एडिशनल कमिश्नर, वाणिज्य कर (मुख्यालय) द्वारा अपने पत्र दिनांक 07.03.2013 द्वारा अवगत कराया गया है कि उक्त वकालतनामा की मूल प्रतियाँ उपलब्ध नहीं हो पा रही है और वकालतनामा की द्वितीय प्रति जारी किये जाने का अनुरोध किया गया। शासन के पत्र संख्या-242/2013/37(110)/XXXVII(8)/12, दिनांक 22.03.2013 द्वारा न्याय विभाग के माध्यम से उक्त वकालतनामों की द्वितीय प्रतियाँ आयुक्त कर को उपलब्ध करा दी गयी। शासन के पत्र सं०. -420/2013/37(110)/XXXVII(8)/12, दिनांक 2.4.2013 द्वारा विशेष अनुज्ञा याचिका दायर किये जाने हेतु जारी किये गए मूल वकालतनामों की इतनी लम्बी अवधि तक एडवोकेट ऑन रिकार्ड को न्यायिक कार्यों हेतु उपलब्ध न कराये जाने के संबंध में संबंधित दोषी अधिकारी का उत्तरदायित्व निर्धारित करते हुए कृत कार्यवाही से शासन को भी अवगत कराये जाने की अपेक्षा की गयी। तदकम में आयुक्त कर ने अपने पत्र सं० 2444/आयु०क०उत्तरा०/वाणि०क०/वाद-अनुभाग/दे०दून/2013-2014, दिनांक 20.8.2013 द्वारा अवगत कराया है कि मुख्यालय द्वारा एडिशनल कमिश्नर, वाणिज्य कर, गढ़वाल जोन, देहरादून को संदर्भित प्रकरण में जांच अधिकारी नियुक्त किया गया। उनके द्वारा अपनी जांच रिपोर्ट पत्रांक-313, दिनांक 26.07.2013 में स्पष्ट किया गया है कि जहां तक मूल वकालतनामा खोने का प्रश्न है "श्री राजेश गिल, तत्कालीन, डिप्टी कमिश्नर (क०नि०) -प्रथम, वाणिज्य कर, देहरादून द्वारा संदर्भित प्रकरण का मूल वकालतनामा वर्तमान में कार्यरत श्री प्रवीन कुमार, डिप्टी कमिश्नर (क०नि०) -प्रथम, वाणिज्य कर, देहरादून को चार्ज में प्राप्त कराये जाने का कोई प्रमाण नहीं दिया है।" अर्थात् अप्रत्यक्ष रूप से मूल वकालतनामा खोने के लिये श्री गिल को जिम्मेदार माना है।

3- उपरोक्त तथ्यों के आलोक में एतद्वारा सम्यक विचारोपरान्त "श्री राजेश गिल को व्यक्तिगत पत्रावली के माध्यम से न्यायिक मामलों से संबंधित महत्वपूर्ण प्रकरण पर बरती गयी लापरवाही के कारण भविष्य के लिये 'सचेत' किया जाता है।"

4- उक्त चेतावनी श्री राजेश गिल के व्यक्तिगत पत्रावली में सुरक्षित रहेगी तथा चरित्र पंजिका में चस्पा की जायेगी।

(भास्करानन्द)
सचिव'

10. The petitioner submitted a representation dated 27.01.2014 (Annexure: A8) against the order dated 13.12.2013 (Annexure: A1)

to the Principal Secretary, Finance, Government of Uttarakhand which after due consideration was rejected by the Government on 03.04.2014(Annexure: A2).

11. The main grounds on the basis of which the petitioner has challenged the impugned order (Annexure: A1) are that the inquiry officer did not provide any opportunity of hearing to the petitioner; the inquiry officer has given its finding on the basis of explanation given by the petitioner to the Commissioner, Commercial Taxes prior to initiation of the inquiry; the Secretary, Finance Department, Government of Uttarakhand also passed the impugned order (Annexure: A1) without providing opportunity of hearing or show cause notice to the petitioner and the representation of the petitioner (Annexure: A8) has been rejected in a perfunctory and casual manner (Annexure: A2).

12. Respondents No. 1, 2 and 3 have opposed the claim petition and in their joint written statement, it has been stated that the petitioner has been given only a warning to be kept in his 'Annual Confidential Report' after conducting an internal inquiry by the department and he has not been awarded any punishment as no departmental inquiry was conducted against him. The petitioner was found responsible for not handing over the charge properly after his transfer and he could not establish that he had also handed over the original 'Vakalatnama' to his successor. The action taken by the Government is as per Rules and Government Orders and, therefore, the petition is liable to be dismissed.

13. Learned counsel for the petitioner has also filed a rejoinder affidavit and the same averments have been reiterated which were stated in the claim petition. Additionally, it has been contended in the rejoinder affidavit that the impugned order against the petitioner has been passed in violation of Rule 10 (2) of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003.

14. We have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of the respondents and have gone through the record including the inquiry file carefully.

15. It would be appropriate to mention provisions relating to minor penalty in the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003. The relevant rules are reproduced below:

“3. The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon the Government Servants:--

(a) Minor Penalties—

(i) Censure;

(ii) Withholding of increments for a specified period;

(iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders;

(iv) Fine in case of persons holding Group “D” posts:”

.....

“10. (1) Where the Disciplinary Authority is satisfied that good and sufficient reasons exist for adopting such a course, it may, subject to the provisions of sub-rule (2) impose one or more of the minor penalties mentioned in rule-3

(2) The Government Servant shall be informed of the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall, after considering the said explanation, if any and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given, the order shall be communicated to the concerned Government Servant.”.

16. It would also be appropriate to look at the Government Order dated 8th January 2003 regarding ‘warning’. The Government Order reads as under:

प्रेषक,

आलोक कुमार जैन,
सचिव,
उत्तरांचल शासन।

सेवा में,

- 1— समस्त प्रमुख सचिव/सचिव/अपर सचिव,
उत्तरांचल शासन।
- 2— समस्त विभागाध्यक्ष/कार्यालयाध्यक्ष,
उत्तरांचल।
- 3— समस्त मण्डलायुक्त,
उत्तरांचल।

कार्मिक अनुभाग-2

देहरादून : दिनांक 08 जनवरी, 2003

विषय— राज्याधीन सेवाओं में राजपत्रित अधिकारियों की गोपनीय पंजिका में चेतावनी, निन्दा, भर्त्सना, असन्तोष आदि के रखे जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषय पर मुझे यह कहने का निदेश हुआ है कि समय-समय पर राज्याधीन सेवाओं में कार्यरत समूह 'क' तथा समूह 'ख' के अधिकारियों के वार्षिक गोपनीय प्रविष्टियों के सम्बन्ध में यह प्रश्न उठाया जाता है कि कौन-कौन से अभिलेख वार्षिक गोपनीय प्रविष्टियों में सम्मिलित किये जायें। इस सम्बन्ध में शासन द्वारा सम्यक् विचारोपरान्त निम्नलिखित निर्णय लिये गये हैं :-

- (1) अनुशासनिक कार्यवाही के फलस्वरूप लिये गये निर्णय के अनुसार जारी निन्दा (सेन्सर), चेतावनी (वार्निंग), असन्तोष (डिसप्लीजर) या भर्त्सना (रिप्रीमेन्ड) आदि से सम्बन्धित पत्रों को अधिकारी की चरित्र पंजी पर रखा जायेगा।
- (2) शासन स्तर से जारी चेतावनी, असन्तोष या भर्त्सना सम्बन्धी पत्रों को भी सम्बन्धित अधिकारी की चरित्र पंजी पर रखा जायेगा।
- (3) अधिकारी की वार्षिक प्रविष्टि अंकित करने हेतु प्राधिकृत प्रतिवेदक/समीक्षक/स्वीकर्ता अधिकारियों द्वारा दी गयी चेतावनी अधिकारी की चरित्र पंजिका पर केवल उस स्थिति में रखी जायेगी, जब वार्षिक प्रविष्टि अंकित करने हेतु प्राधिकृत अधिकारी द्वारा यह उल्लेख किया जाय कि सम्बन्धित अधिकारी को चेतावनी दी गयी थी। यदि किसी उच्च अधिकारी द्वारा अपने अधीनस्थ अधिकारी को चेतावनी दी जाती है अथवा असन्तोष अथवा भर्त्सना सूचित की जाती है तो उसे उस अधिकारी की व्यक्तिगत पत्रावली में रखा जायेगा। वर्ष के अन्त में प्रतिवेदक अधिकारी प्रविष्टि अंकित करते समय इस पर विचार करेंगे और यदि उस अधिकारी में सुधार पाया जाता है तो उस चेतावनी अथवा असन्तोष या भर्त्सना का उल्लेख प्रविष्टि में नहीं किया जायेगा। यदि सुधार नहीं पाया जाता है तब उस चेतावनी अथवा असन्तोष या भर्त्सना को चरित्र पंजिका में रखते हुए वार्षिक प्रविष्टि में उसका उल्लेख किया जायेगा।
- (4) शासन से भिन्न प्राधिकारियों जिसमें सांविधिक प्राधिकारी (कॉन्सटीट्यूशनल अथॉरिटी) भी सम्मिलित हैं द्वारा जारी की गयी चेतावनी आदि को सम्बन्धित अधिकारी की चरित्र पंजी पर रखने के सम्बन्ध में शासन द्वारा समस्त परिस्थितियों को दृष्टिगत रखते हुए सावधानीपूर्वक विचार कर यह निर्णय लिया जायेगा कि इसे चरित्र पंजी पर रखा जाय अथवा नहीं।
- (5) चरित्र पंजी पर उपरोक्तानुसार रखी गयी चेतावनी, भर्त्सना, असन्तोष आदि को प्रतिकूल प्रविष्टि के रूप में माना जायेगा और तदनुसार अग्रेतर कार्यवाही की जायेगी।

अनुरोध है कि कृपया उक्त निर्णय से अपने अधीनस्थ समस्त कर्मचारियों को अवगत कराने का कष्ट करें।

भवदीय,
आलोक कुमार जैन,
सचिव।”

17. Learned counsel for the petitioner has argued that after his transfer, he had handed over all the files/papers related to ‘Sarva Shri Sagar Sons’ to his successor. The ‘charge note’ clearly mentions it. The ‘Vakalatnama’ was also on the file when he handed over the charge. It has been further contended by learned counsel that the successor Deputy Commissioner (Shri Praveen Kumar) is responsible for the delay and loss of the ‘Vakalatnama’. We feel that this Tribunal is making a judicial review and not sitting as appellate authority. The scope of the judicial review is very limited. It would not be proper for the Tribunal to make an attempt to ascertain who is responsible for the loss of original Vakalatnama. It is settled principle of law that in judicial review, re-appreciation of evidence as an appellate authority is not made. The adequacy or reliability of the evidence is not the matter which can be permitted to be argued before the Tribunal. The Tribunal would not interfere with the finding of the facts so long as there is some evidence to support the conclusion arrived at by the authority. While exercising the power of judicial review, the Tribunal cannot substitute its own conclusion for that of the departmental authority. The judicial review is directed not against the ‘decision’ but is confined to the examination of the ‘decision making process’. Neither the question as to whether there was sufficient evidence before the authority can be raised nor the correctness of the order under challenge can be examined. The departmental authority is the sole judge of the facts. In view of above, we find that in the case in hand, the Tribunal has no reason to interfere in the conclusion arrived at by the departmental authority in respect of responsibility for the loss of the original Vakalatnama.

18. Learned counsel for the petitioner has also argued that neither the inquiry officer nor the disciplinary authority provided any opportunity of hearing to the petitioner and, therefore, the principles of natural justice have been violated. It has further been argued by learned counsel for the petitioner that Rule 10(2) of the above mentioned Rules has also not been followed. Therefore, impugned order (Annexure: A1) is bad in the eye of law. Learned A.P.O. has refuted the contention of the learned counsel for the petitioner and has contended that the petitioner has been given only a warning which was to be kept in his 'Annual Confidential Report' and the same has been done after conducting an internal inquiry and no punishment has been awarded to the petitioner under the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003. Learned A.P.O. has contended that as no departmental inquiry was conducted against the petitioner, Rule 10(2) is not applicable in the present case.

19. The main issues before us to examine are whether the petitioner has been awarded any minor punishment or not, whether any departmental inquiry was conducted against the petitioner or not, whether the provision of Rule 10(2) of the above mentioned Rules is applicable or not and whether the principles of natural justice have been followed or not. After careful perusal of impugned order and all the record, we find that in the case in hand no departmental enquiry has been instituted and conducted. The department conducted an internal inquiry to fix the responsibility for delay in the filing of 'Vakalatnama' to the 'Advocate on Record' of the Government of Uttarakhand in the Supreme Court and loss of Vakalatnama. After the inquiry report, the disciplinary authority vide impugned order has issued a warning which is to be kept in the 'Annual Confidential Report' of the petitioner. As is clear from the above mentioned Rules that the 'warning' is not a punishment. The warning has been given to the petitioner purely as an administrative measure and not as a result of disciplinary proceedings.

20. Rule 10(2) of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (reproduced in paragraph 15 of this order) provides that for imposing any minor penalty, it is mandatory to inform substance of the imputations against the Government servant and to provide him an opportunity for his explanation before passing an order against him. The case of the petitioner is not to impose a minor penalty under Rule 10(2) of the said Rules and, therefore, the process prescribed under this Rule is not relevant in the case in hand. The petitioner has been issued merely a warning which does not amount to imposing a minor penalty and, therefore, it was not necessary to comply with the principles of natural justice before giving a warning. Since the case of the petitioner is a case of 'warning' (to be kept in his ACR) and is governed by the G.O. dated 08.01.2003.

21. The perusal of Government Order dated 08.01.2003, which has been reproduced in paragraph 16 of this order reveals that according to para (2), the 'warning' which is issued by the Government will be kept in the Character Roll of the concerned officer. It has further been provided in para (5) of the Government Order that such 'warning' will be treated as an adverse entry and further action is to be taken accordingly. It is clear from the said Government Order that the 'warning' given to an officer which has been recorded in his ACR is adverse entry and it will be governed by the Rules related to adverse entry.

22. The Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 have been framed to deal with the disposal of representation against the adverse entry. The petitioner submitted his representation against the 'warning' recorded in the 'Annual Confidential Report' and after due consideration, the same has been rejected by the Government. The petitioner has not pointed

out any violation of the said Rules in regard to the adverse entry given to the petitioner in the form of 'warning' and disposal of representation against it.

23. The Hon'ble High Court of Delhi in **Gopal Bhagat Vs. Municipal Corporation of Delhi, 1995 (34)DRJ 622, decided on 31.08.1995** has distinguished between 'Censure' and 'Warning'. We reproduce para 14, 15, and 16 of the said judgment as below:

“(14) Censure and warning may appear to be something similar in as much as the object behind both is to reprimand an erring employee. However, the two have distinct connotation and perception in service jurisprudence. The penalty of censure punishes an employee for something done in the past, alleged and found proved in a process in which employee has a right to participate. Warning does not punish an employee; it puts an employee on its guard for future and is issued on facts enabling formation satisfactorily of a bonafide opinion, though such facts may be found in a process in which the employee did not have the Opportunity (much less a right) of participation. Penalty is for the past; warning is for the future. Penalty proceeds on a decision; warning wishes - let there be no occasion for a decision.

(15) Thus a warning is not necessarily a penalty of Censure. Warning may be oral or in writing. If it is oral, it remains a matter between the officer issuing the warning and the employee receiving it. All its efficacy is lost no sooner one of them is transferred or shifted so as to snap the proximity of relationship between the two.

(16) If the warning is in writing or a recordable warning, it is in its legal implication akin to an adverse entry in the confidential records of the employee. Though the employee was not intended to be penalised yet being a recordable warning it goes in the personal record of the employee and becomes relevant for the purpose of assessing the overall performance of the employee. A recordable warning shall, therefore, have to be dealt with on lines similar to ACRs. Though no opportunity of hearing or a notice to show cause against need precede the issuance of a warning yet the employee must have an opportunity of making a representation against and such a representation if made shall have to be considered and disposed of by the authority issuing the warning or its superior authority. This alone will be consistent with the principles of natural justice and fair play.”

24. In the case in hand, the petitioner has been issued recordable warning only and no punishment has been given to him. A recordable warning has to be dealt with on line similar to ACRs as is evident from the Government Order of 08.01.2003 above. We are, therefore, of the opinion that no opportunity of hearing or a notice to show cause was required to be given for the issuance of a 'warning'. In fact, no departmental inquiry was instituted/conducted against the petitioner. However, the petitioner is entitled to have an opportunity of making the representation against such recordable warning. The petitioner gave a representation against the 'warning' and after due consideration, it was rejected by the Government. Since the petitioner has not been awarded any minor punishment under the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 and, therefore, Rule 10(2) of the said Rules is not applicable in the case in hand. Thus, action taken against the petitioner is as per Government Order and there is no violation of any Rule or the principles of natural justice.

25. For the reasons stated above, we do not find any force in the claim petition and the same is liable to be dismissed.

ORDER

The petition is, hereby, dismissed. No order as to costs.

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: FEBRUARY 04, 2016
DEHRADUN

KNP