

**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. 37 /DB/2020

Saroj Kumar Tripathi, aged about 49 years, s/o Sri Sheshmani Tripathi, presently posted as District Programme Officer, Pauri Garhwal, District Pauri Garhwal.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary Women Empowerment and Child Development, Government of Uttarakhand, Civil Secretariat, Dehradun.
2. Director, ICDS, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Pankaj Purohit, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JUNE 25, 2021

Justice U.C.Dhyani (Oral)

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

“a) To quash the impugned order contained in order no. 263/XVII(4)/ 2017-159/2002 dated 09.03.2017 (Annexure: A1) passed by the respondent no.1, whereby the representation dated 08.12.2016 submitted by the petitioner for grant of 1st ACP Scheme for Rs.6600/- w.e.f. 2009 and 2nd ACP Scheme for Rs.7600/- w.e.f. 2015, has been rejected, or alternatively,

aa) To issue an order or direction to the respondents to consider the claim of the petitioner very sympathetically for sanction/grant of the benefit of ACP Scheme enunciated by the Govt.

Order dated 28.02.2009, clarified and amended vide subsequent Govt. Orders on completion of 10 years and 16 years of continuous and satisfactory services as per his entitlements and further to grant the arrears of pay-scales sanctioned to him after grant of ACP w.e.f. date of its entitlement, up to date, ignoring the rejection order dated 09.03.2017 (Annexure: A1 to the claim petition) passed by respondent no.1, which is statutory representation.

b) To issue an order or direction directing the respondents to sanction/grant of the benefit of ACP Scheme enunciated by the Govt. Order dated 28.02.2009, clarified and amended vide subsequent Govt. Orders on completion of 10 years and 16 years of continuous and satisfactory services as per his entitlements and further to grant the arrears of pay-scales sanctioned to him after grant of ACP w.e.f. date of its entitlement, up to date.

c) Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d) Award the cost of the petition in the favour of the petitioner.”

2 Facts, giving rise to present claim petition, are as follows :

2.1 Order dated 09.03.2017 (Copy: Annexure- A 1), issued by Secretary, Women Empowerment and Child Development, is in the teeth of present claim petition. He has prayed for the benefit of Assured Career Progression (for short, ACP) Scheme in the present claim petition.

2.2 Presently, the petitioner is posted as District Programme Officer (for short, DPO), in Pauri Garhwal. He was appointed as DPO *vide* order dated 12.05.1999 and was posted as DPO, Tehri Garhwal in the pay scale of Rs.8000-275-13500/- under the orders of the Secretary, Women Empowerment and Child Development (Copy: Annexure- A 2). Petitioner gave his joining in District Tehri Garhwal on 19.07.1999 (Copy: Annexure- A 3).

2.3 In the year 2002, some financial irregularities were noticed by the petitioner. He reported the matter to District Magistrate, Tehri Garhwal, alleging that the Senior Clerk in the office of the petitioner, namely, Sri Ramesh Chandra Raturi, committed certain financial irregularities and despite his order, the said Senior Clerk was not making the file available to the petitioner. He, therefore, made a recommendation to place Sri Ramesh Chandra, Senior Clerk under suspension (Copy: Annexure- A 4). Respondent No.1, after preliminary enquiry, instead of

taking action against the Senior Clerk, placed the petitioner under suspension and departmental enquiry was initiated against him *vide* order dated 10.07.2002. On completion of enquiry, punishment was given to him by Respondent No.1 *vide* order dated 12.11.2007. Petitioner's one annual increment was directed to be stopped with cumulative effect and he was further directed to deposit 75% of the amount of embezzlement and rest 25% was directed to be recovered from the Senior Clerk, Sri Ramesh Chandra Raturi. The petitioner deposited 75% amount in the Government Treasury on 02.04.2008, pursuant to order dated 12.11.2007. On petitioner's moving a representation against order dated 12.11.2007, Respondent No.1, *vide* order dated 27.11.2009 directed the department to release the salary and other arrears of the suspension period to the petitioner, keeping in view the fact that the petitioner co-operated in the enquiry and it was he, who brought the irregularity committed by the Senior Clerk to the notice of the department. Petitioner was paid entire salary along with arrears of suspension period. (Copy: Annexure- A 6).

2.4 The main purpose of framing the ACP Scheme is to remove stagnation in the service career of such employees who have no avenues or who did not get promotion in their service. The petitioner has been working as DPO since 1999. He has not been promoted to the higher post so far and, therefore, according to the petitioner, he is entitled to the benefit of ACP Scheme. First G.O. of ACP Scheme was issued on 28.02.2009 (copy: Annexure- A 7).

2.5 Petitioner made a representation to Respondents No. 1 & 2 on 16.09.2009, requesting them to grant him the benefit of ACP Scheme on completion of 10 years of service in the department (Copy: Annexure- A 8). The same was not done. The petitioner then moved a representation on 05.12.2014, requesting for the benefit of ACP. He further requested that in May, 2016, the petitioner would become entitled to get the next higher grade pay Rs.7600/- on completion of 16 years of service and he is sustaining continuous financial loss. Therefore, he should be granted benefit of ACP Scheme. (Copy of representation dated 05.12.2014: Annexure- A 9).

2.6 When the Respondents did not do anything, the petitioner moved under Right to Information Act, 2005 (for short, RTI) . In reply, it was found that the respondent department is still in correspondence with Respondent No.2 (Copy: Annexure- A 11). Two ACPs, one on completion of 10 years of service and another on completion of 16 years of service became due to the petitioner, according to him. The petitioner again moved a representation on 08.12.2016 (Copy: Annexure- A 12). When nothing was done, the petitioner moved a Writ Petition, being WPSB No. 523/2016, before Hon'ble High Court of Uttarakhand at Nainital. Hon'ble Court *vide* order dated 27.12.2016 was pleased to direct the respondents to decide the representation of the petitioner with a speaking order within a period of three months (Copy of the judgment: Annexure- A14). Accordingly, the petitioner moved a representation on 30.12.2016 (Copy: Annexure- A 15). Respondent No.1 *vide* order dated 09.03.2017 rejected the representation of the petitioner. While rejecting the representation of the petitioner for grant of benefits of 1st and 2nd ACP Scheme, which became due in the years 2009 and 2015, respondents took shelter of recommendations of the Screening Committee. According to the petitioner, the Respondent No.1, while rejecting the representation of the petitioner, misinterpreted the G.O. dated 30.06.1993. The petitioner has highlighted various reasons, in the claim petition, while assailing the order of the Respondent No.1, denying him the benefits of ACP Scheme. The petitioner has, therefore, sought quashing order dated 09.03.2017 (Annexure: A-1) passed by Respondent No.1; a direction to respondents to consider the claim of the petitioner for sanction/grant of benefits of ACP under the Schemes of the Govt. under order dated 28.02.2009, which was clarified and amended by subsequent G.O., on completion of 10 years and 16 years of service, as per his entitlement; ignoring rejection order dated 09.03.2017 (Annexure: A-1) passed by Respondent No.1; granting the petitioner benefit of ACP Scheme as per his entitlement and arrears of pay scale sanctioned to him after grant of such ACP.

3. Separate Counter Affidavits/ Written Statements have been filed on behalf of Respondents No. 1 & 2. Whereas Sri Laxman Singh, Joint

Secretary, Women Empowerment and Child Development, Govt. of Uttarakhand, has filed C.A./W.S. on behalf of Respondent No.1, Sri Satish Kumar Singh, Deputy Director, Women Empowerment and Child Development, Govt. of Uttarakhand, Dehradun, has filed C.A./W.S. on behalf of Respondent No.2.

4. It has been stated, on behalf of respondents that the petitioner is not entitled to get the benefit of 1st ACP in grade pay Rs.6600/- *w.e.f.* 2009 and 2nd ACP in grade pay Rs. 7600/- *w.e.f.* 2015, due to unsatisfactory service record. The representation dated 08.12.2016 of the petitioner was rightly rejected by Respondent No.1, which was based on the recommendation of the Screening Committee held on 03.02.2017, according to the respondents.

4.1 As per the W.Ss., the claim petition is time barred in view of Section 5(1)(b)(i) of the Uttar Pradesh Public Services (Tribunal) Act, 1976, which provides for, as under:

‘Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year’.

The delay has not been condoned at the admission stage, which question has been left open to be decided at the time of final hearing.

4.2 It is the submission of Ld. A.P.O. that the claim petition is liable to be dismissed on the ground of limitation alone, without going into the merits of the case.

5. Rejoinder Affidavit has also been filed by the petitioner, reiterating the facts contained in the claim petition.

6. The petitioner committed financial irregularity. He issued a cheque worth Rs.1,04,495/- in his own name from Govt. head during probation period, which is a serious misconduct. Petitioner was suspended on 10.07.2002 (Copy: Annexure- CA-R6). When the punishment order was passed, petitioner deposited 75% of the embezzled amount in the treasury on 02.04.2008. Balance 25% was recovered from Senior Clerk of the office, who was in collusion with the petitioner. Punishment of stoppage of one increment with cumulative effect was passed on

12.11.2007, which order remains in operation against the petitioner. The appeal filed by the petitioner against the punishment order was rejected by the Government on 08.10.2012. The State Govt. was intimated by the Respondent Directorate (Respondent No.2), through letter dated 18.12.2015, that the misconduct committed by the petitioner although called for his dismissal from his service, but he was given only punishment of stoppage of one increment with cumulative effect. The petitioner was not found eligible for grant of ACP by the Screening Committee. Respondents have also given detailed reasons, in their C.As./W.Ss. as to why the petitioner is not entitled to grant of ACP.

7. As has been mentioned in the claim petition, the petitioner first approached Hon'ble High Court, who, *vide* order dated 24.06.2020 (Copy of order: Annexure- A7) refused to entertain the writ petition, leaving it open to the petitioner to approach the Public Services Tribunal. It will be apposite to reproduce the said order of Hon'ble High Court, as under:

“Heard Mr. Pankaj Purohit, learned Counsel for the petitioner and Mr. K.N. Joshi, learned Dy. Advocate General for the State Government.

2. The extra-ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, has been invoked by the petitioner questioning the order dated 09.03.2017 whereby the representation, for grant of first and second ACP benefits, was rejected in the light of the recommendations of the Screening Committee.

3. Elaborate submissions were put forth by Mr. Pankaj Purohit, learned Counsel for the petitioner on merits. When we inquired from him why the petitioner should not be relegated to approach the Public Service Tribunal, learned Counsel would state that, since the order impugned in this writ petition was passed more than three years ago, the Tribunal may not entertain such a belated petition. As the U.P. Public Services Tribunal Act, 1976 confers jurisdiction of the Tribunal to condone the delay in invoking its jurisdiction, we have no reason to doubt that, on any such request being made, the Tribunal would give such a request its due consideration. The petitioner's request for early disposal of the claim petition shall also be considered by the Tribunal as it deems fit and proper.

4. We see no reason, in such circumstances, to entertain this writ petition. Leaving it open to the writ-petitioner to approach the Public Service Tribunal in this regard, the writ petition fails and, is accordingly, dismissed. No costs.”

8. Government issued G.Os. relating to grant of ACP from time to time. The petitioner relied upon G.O. dated 28.02.2009 (Annexure: A-

7), in which there is a provision for grant of ACP on continuous satisfactory service of 10 years, 20 years and 30 years. The said G.O. was subsequently modified by the Govt., which G.O. has been enclosed with the C.A. of the respondents (G.O. dated 08.03.2011: Annexure-CA-R4). The gravamen of the G.Os., for grant of ACP to the employees, is that they should have continuous satisfactory service. An employee is entitled to first such financial up-gradation after continuous satisfactory service of 10 years.

9. Let us now examine, whether the petitioner is entitled to 1st such financial up-gradation?

Petitioner was appointed as DPO on 19.07.1999. On serious allegation of financial irregularity, departmental inquiry was initiated against him on 10.07.2002. His services were suspended. Thereafter, he was reinstated in service. The punishment was given to him on 12.11.2007 (Copy: Annexure- A 5). Major penalty was awarded to him, whereby one increment was stopped with cumulative effect and he was directed to deposit 75% of the money embezzled by him.

Such punishment order was passed on 12.11.2007. He started his career as DPO on 19.07.1999. According to Ld. Counsel for the petitioner, no punishment order was passed against him because his representation was allowed whereby suspension order was revoked with the direction to fulfill certain financial obligations. Ld. A.P.O. submitted that even if the petitioner was reinstated in service and he was directed to deposit 75% of the embezzled amount, the fact remains that he was punished with stoppage of one increment with cumulative effect (besides a direction to deposit 75% of the money embezzled by him).

The documents brought on record clearly indicate that in the punishment order, which was passed against the petitioner on 12.11.2007 (Annexure: A-5), he was found guilty and major penalty was awarded to him. Even if the petitioner was reinstated and his representation was allowed by revoking the suspension order and releasing arrears of suspension period, it cannot be said that no

punishment order was passed against him. The allegations leveled (and proved) against the petitioner were of serious nature.

19.07.1999 + 10 years = 19.07.2009. Had the petitioner served satisfactorily, he would have been entitled to 1st ACP, which he is not. His services although remained continuous, but he was given major penalty of permanent stoppage of one increment with cumulative effect during this period, on 12.11.2007. Service record of initial 10 years, therefore, cannot be said to be satisfactory. This Tribunal is unable to subscribe to the submission of Ld. Counsel for the petitioner that by allowing the petitioner's representation, the Govt. has absolved him of the charges. The representation, which was allowed, was to the effect that the petitioner, who was suspended, shall be released arrears of suspension period. *Per contra*, Ld. A.P.O. submitted that since the petitioner has not performed satisfactory service for initial 10 years, therefore, he is not entitled to the benefit of first financial up-gradation. We agree with such submission of Ld. A.P.O.

10. Ld. Counsel for the petitioner assailed Annexure: A-1 dated 04.02.2017 with vehemence. Ld. Counsel for the petitioner submitted that petitioner cannot be faulted for non-availability of Annual Character Roll (ACR), which was the basis of denial of 1st ACP by the recommendations of Screening Committee, on the basis of which Secretary to the Govt. in Women Empowerment and Child Development Department passed Annexure: A-1. We have found in Annexure: A-1 that Screening Committee's recommendation was not based upon non-availability of ACR during petitioner's suspension period, but on the fact that he was punished with stoppage of one increment with cumulative effect and was also directed to pay 75% of the amount embezzled, although this Tribunal is in agreement with the submission of Ld. Counsel for the petitioner that a delinquent employee cannot be faulted for non-availability of ACRs, for recording of ACRs is not in his hands, but, in the instant case, the fact remains that this was the period when the petitioner's services were put under suspension and such period covers first 10 years, in which major penalty was awarded to the petitioner, on 12.11.2007. In other words,

even if the ACRs of the delinquent petitioner would have been available for perusal of the Screening Committee, the net effect would have been the same. The recommendation of the Screening Committee was accepted by the Secretary to the Government in Women Empowerment and Child Development Department, while issuing Office Memorandum dated 04.02.2017 (Annexure: A-1).

11. We were taken to left and right, by the petitioner, in a zeal to succeed in his claim petition by pleading that Annexure: A-6 has, in effect, obliterated Annexure: A-5, but the Tribunal, as an adjudicating body, has to remain focussed on the core issue while deciding the claim petition. How can release of arrears of suspension period put the punishment order (awarding major penalty) into back-burner?

12. Annexure: A-6 is only in the nature of decision taken under Para 54-B, Financial Handbook, Vol. 2 to 4, which reads as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

(3).....

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant it may, after giving him an opportunity to make his representation [within 60 days from the date on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such [amount (not being the whole)] of such pay and allowances as it may determine”

[*Emphasis supplied*]

Para 54-B Financial Handbook (*supra*), therefore, provides that when a Govt. servant, who has been suspended, is reinstated, the authority competent to order reinstatement, shall consider and make a specific order regarding pay and allowances to be paid to the Govt.

servant for the period of suspension ending with reinstatement and whether or not the said period shall be treated as a period spent on duty.

13. The logic is simple. G.O. for first financial up-gradation (or, for other subsequent financial up-gradation,) requires that an employee should have continuous and satisfactory service, initially for first 10 years and subsequently, for other years, in which 2nd and 3rd financial up-gradation under ACP Scheme becomes admissible to him. If an employee has been found guilty and has been awarded major punishment, it cannot be said, by any stretch of imagination, that his service record is satisfactory, even if ACRs for that period were not available, for no fault of the delinquent employee. The fact remains that the petitioner was awarded major penalty on 12.11.2007. If the petitioner made a representation and his representation was allowed by releasing him arrears of suspension period, the same does not mean that the delinquent employee has been absolved of the serious charges leveled against him. In all humility, we cannot accept the submission of Ld. Counsel for the petitioner that when petitioner's arrears of suspension period were released, on his representation, he was absolved of the charges leveled against him. It is more than clear that punishment order dated 12.11.2007 (Annexure: A-5) was passed against him, which means that the petitioner had no satisfactory service for the initial 10 years of his career.

14. Ld. Counsel for the petitioner next argued that a person cannot be punished twice for the same offence or misconduct in view of Article 20(2) of the Constitution of India. We partly agree with such submission of Ld. Counsel for the petitioner. No doubt, it is the fundamental law of the land that no one should be vexed twice for the same cause, but such constitutional protection is available only in respect of 'offence'. The punishment, in the instant case, was given to the petitioner, for 'misconduct'. Had he been tried twice for the same offence, the constitutional protection would have come to his rescue, but here it is not. It is not the case of the petitioner that he was 'prosecuted and punished' for the same cause in a Court of Law twice. Whenever any suspension order is passed, it is in contemplation of

departmental inquiry. If, during the course of departmental enquiry, suspension order was passed, which was subsequently revoked, the same does not mean that the charges are dropped against him. If the petitioner has deposited 75% of the amount embezzled, the same does not mean that he has not been punished with stoppage of one increment with cumulative effect. Anyway, this Tribunal is not hearing the appeal or claim petition against award of major penalty to the petitioner which was given *vide* order dated 12.11.2007. The Tribunal is simply examining the case of the petitioner, as to whether petitioner is entitled to the benefit of ACP or not?

Our discussion is focused on whether he has put in satisfactory service for the first 10 years?

15. The facts which are culled out from the record, clearly indicate that he was awarded major penalty on 12.11.2007 and it was within first 10 years of his service career. His first 10 years' service, therefore, cannot be said to be satisfactory.

The reply cannot be in favour of the petitioner.

16. On the basis of above discussion, we arrive at the irresistible conclusion that the petitioner, on completing first ten years of service, was not entitled to the benefit of 1st ACP..

17. To recapitulate, the allegation against he petitioner was that he issued a cheque amounting to Rs.1,04,495/- in his own name from Govt. head during probation period[Para 6 of Annexure: CA- R2]. Petitioner gave the joining on the post of DPO, Tehri Garhwal on 19.07.1999 (Annexure: A-3) pursuant to appointment letter dated 12.05.1999. He was suspended for embezzlement of Govt. money. Enquiry followed.

- 17.1 According to the petitioner, when his representation was allowed and his arrears of suspension period were released (Annexure: A-6), he was absolved of the charges leveled against him. It is not so. He was suspended and departmental enquiry proceeded. When the departmental enquiry was concluded, he was punished with – (i)

stoppage of one increment with cumulative effect (ii) with a direction upon him to deposit 75% of the embezzled amount(which he deposited).

17.2 Major punishment was awarded to him on 12.11.2007 (Annexure: A-5). Vide Annexure: A-6, arrears of suspension period were released, which did not mean that he has been absolved of the charges leveled against him. Order dated 12.11.2007 (Annexure: A-5) is clearly indicative of the fact that the petitioner has been awarded major punishment, which punishment order was within 10 years of his joining the service. [19.07.1999+10=19.07.2009].

17.3 An attempt has been made to show, on the basis of photocopies of the notings of the department, that since the punishment relates to an incident occurred in 2002/2003, therefore, the effect of misconduct shall be only for five years.

17.4 The noting, it appears, is misleading and does not indicate correct facts, as also correct application of G.O. dated 30.06.1993 (Copy of Noting: Annexure-A 3). When ACP Scheme has been introduced by the Govt., then the department will go by the terms and conditions of that scheme, and not by an earlier G.O. dated 30.06.1993, which was issued in different context. Even if G.O. dated 30.06.1993 is taken into reckoning, the same also vests discretion in the appropriate authority to decide as to whether the delinquent has rendered satisfactory services or not. In the instant case, the Screening Committee, in its report dated 03.02.2017 (Copy: Annexure- CA- R3) has correctly highlighted the facts and did not recommend grant of benefits of 1st ACP to the petitioner, although it is a different fact that, when, on the basis of the recommendation of Screening Committee, the order dated 04.02.2017 (Annexure: A-1) was issued, it was not happily worded.

18. Punishment order dated 12.11.2007 is not under challenge in present claim petition.

19. The Tribunal is unable to accept the plea of the petitioner that, by revoking his suspension order and releasing the arrears of suspension period, punishment order, in substance, has been set aside. The

punishment order dated 12.11.2007 was passed after revocation of suspension order, which was, during the course of enquiry. If entire salary of the suspension period has been allowed to the petitioner, that simply shows that his service is continuous and he has been allowed full salary and allowances during suspension period.

20. The Tribunal is unable to accept the plea of the petitioner, as highlighted in the claim petition, that by revoking the suspension order and releasing arrears of suspension period, the petitioner has been absolved of the charges leveled against him and the matter has been finally settled by the competent authority. The Tribunal is also unable to accept the contention of the petitioner that the suspension order (or punishment order), and denial of ACP cannot go hand-in-hand, which, according to the petitioner, is violation of Article 20(2) of the Constitution of India. We have discussed this issue in one of the foregoing paragraphs of this judgment to hold that constitutional protection of Article 20(2) will be given to anybody when one has been 'prosecuted and punished' twice, which is not so in the present case. Suspension order was passed on 10.07.2002, followed by an enquiry. Suspension order was revoked during the course of enquiry, which was concluded by holding the petitioner guilty. When the petitioner is claiming benefit of ACP, according to his entitlement, this Tribunal has to read, interpret and apply such ACP Scheme to the facts of instant case.

21. Various G.Os. were issued, from time to time, on grant of ACP. Those are— G.O. dated 09.02.2010, G.O. dated 15.10.2010, G.O. dated 08.03.2011, which remained in force till 2016 and now MACP is applicable since 01.01.2017. In G.O. dated 08.03.2011, grant of benefit of financial up-gradation has been indicated after completion of 10 years, 16 years and 26 years. In any case, the grant of benefit of 1st ACP has to be considered for 10 years continuous and satisfactory service. It has been mentioned earlier that the petitioner has been awarded major penalty on 12.11.2007 (Annexure: A-5), whereby he has been punished with stoppage of one increment with cumulative effect and a direction to him to deposit 75% of the embezzled amount.

Since such punishment order was passed in the first 10 years of the service career of the petitioner, therefore, he cannot be granted benefit of 1st financial up-gradation as per ACP Scheme.

22. In one of the reliefs, the petitioner has claimed that he should be given benefit of ACP, according to his entitlement.
23. 19.07.2009 +10= 19.07.2019. Discussion, in this part will focus on whether the petitioner is entitled to his (deferred) 1st ACP ? Has he performed satisfactorily in the next 10 years (2009+10=2019)?
24. The case of the respondents is that the petitioner was given adverse entries in the year 2013-14 and 2014-15. Under the caption of 'Additional plea' in C.A. of Sri Laxman Singh, Joint Secretary, Women Empowerment and Child Development, Govt. of Uttarakhand, (C.A. on behalf of Respondent No.1) as also in C.A. of Sri Satish Kumar Singh, Deputy Director, Women Empowerment and Child Development, Govt. of Uttarakhand, Directorate, Dehradun, (C.A. on behalf of Respondent No.2), it has been mentioned that the petitioner was awarded adverse entry for the year 2013-14 and for the year 2014-15 by the authority concerned, against which petitioner moved a representation to the Govt. (Principal Secretary), after the entries were duly communicated to the petitioner. Moreover, the petitioner has never challenged the said entries before any competent Court. It has also been stated in the additional pleas that the time limit to challenge the same is over as per Rules, hence the petitioner is not legally entitled to get the benefit of 1st ACP in grade pay Rs.6600/- and second grade pay Rs.7600/-.
25. Annexures: CA- R7 and CA- R8 have been filed in support of such averments in the C.As. Annexure: CA- R7 is the ACR of the year 2013-14, in which the performance of the petitioner has been categorized as 'Bad'. Annexure: CA- R8 is the ACR of the year 2014-15, in which, although Reporting Officer has categorized him as

‘Excellent’, the Reviewing Officer has categorized him as ‘Bad/Unsatisfactory’ employee. Accepting Officer has categorized his performance as, ‘Unsatisfactory’. The Accepting Authority has done so on 19.12.2017.

26. R.A. has been filed by the petitioner with the following averments. It will be apposite to quote para 28 of the R.A. dated 07.12.2020, herein below for use:

“In reply to the contentions made by the answering respondent in the additional-plea, it is submitted that the adverse entry allegedly made against the petitioner is for the year 2013-14 has never been communicated to the claim petitioner, hence has no bearing on the claim of the petitioner. It is needless to say that the non communicated adverse entries are of no consequence.

So far as the adverse entry for the year 2014-15 is concerned, against this adverse entry, which was communicated to the petitioner on 16.01.2018, the petitioner moved a representation dated 17.03.2018, which has not been decided till date. Therefore there is no reason to challenge the same before any Court of law. Such a delayed communication is no communication in the eye of law. It is further submitted that for the same period the services of the petitioner were appreciated by terming it excellent and the recommending authority also certified the services of the claim petitioner and termed it excellent and thereafter the reviewing officer, Director, ICDS, who was also holding the charge of Additional Secretary of the department, with ulterior motive made the adverse entry and refused to certify the services of the petitioner and that too after the time frame prescribed in the G.O. No. 708/XXXII(2)2010 dated 19.07.2010. Apart from this, in view of the G.O. No. 1712/Personnel Section 2 Dehradun dated 18.12.2003; the adverse entry shall be communicated to the officer concerned within a period of 45 days. But in case of the petitioner, the same has been communicated after 4 years on 16.01.2018. A true copy of the letter dated 16.01.2018 is annexed herewith and marked as Annexure: A 1 to the R.A.”

[Emphasis supplied]

27. No document has been offered to show that— (i) adverse entry for the year 2013-14 has ever been communicated to the claim petitioner, (ii) the representation dated 17.03.2018 has been decided till date.
28. There is averment against the averment. Respondents, in their C.As. relied on Annexures: CA- R7 and CA-R 8, to plead that the service record of the petitioner for the period 2009-2019 was not satisfactory. The petitioner is denying such fact by filing R.A. There is oath versus oath. Allegations are leveled and allegations are denied.

Best evidence rule is that when a documents can be filed in support of fact stated, the same should be produced. When the petitioner is denying that the adverse entry for the year 2013-14 was never communicated to him, respondents ought to have placed the document to show that the said adverse entry was communicated to him, which has not been done in the instant case. Further, when the petitioner has stated that his representation against the adverse entry for the year 2014-15 has not been decided till date, it was the duty of respondents to show, by filing the document, that petitioner's representation dated 17.03.2018 has been decided and communicated to him. The same has also not been done in the instant case. How can, then, the documents enclosed as Annexures: CA- R7 and CA- R8, be read against the petitioner?

29. In a nutshell, adverse entry for the year 2013-14 has not been communicated to the petitioner, and adverse entry for the year 2014-15 was although communicated to him, but petitioner's representation dated 17.03.2018 (Annexure: CA-R9) has not been decided. In this way, there is no adverse material against the petitioner to hold that his services during the period 2009-2019 are 'unsatisfactory'. Petitioner is, therefore, entitled to the benefit of 1st ACP *w.e.f.* 19.07.2019.

Since the petitioner has recurring cause of action and that being so, the claim petition is within limitation.

30. The claim petition is partly allowed by directing the respondents to grant the benefit of 1st (deferred) ACP *w.e.f.* 19.07.2019 along with arrears, at an earliest possible, and without unreasonable delay. The claim petition stands dismissed for rest of the reliefs. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 25, 2021
DEHRADUN

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