

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

Through Audio conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CONTEMPT PETITION NO.03/DB/2021

Vivek Swaroop Srivastava, S/o Sri Jagdish Narayan Srivastava, presently posted as Finance Controller, Medical Education, Srinagar Medical College, Srinagar, District Pauri, Uttarakhand.

.....Petitioner

vs.

State of Uttarakhand through Secretary, Finance, & others

.....Respondents.

Present: Sri Deepak Singh, Advocate, for the petitioner.

ORDER

DATED: JULY 19, 2021

Justice U.C.Dhyani (Oral)

Power to punish for contempt:

Section 5-A of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to State of Uttarakhand) (for short, the 'Act') provides for the power of the Tribunal to punish for contempt. The Tribunal has jurisdiction, powers and authority in respect of contempt of itself as the Hon'ble High Court has, and may exercise, in respect of contempt of itself powers under the Contempt of Courts Act, 1971.

Provisions in the statutory Rules:

The U.P. Public Services (Tribunal)(Procedure) Rules, 1992 (as application to State of Uttarakhand) (for short, the 'Rules') provide for contempt in the presence of the Tribunal (Rule 46), Cognizance (Rule 47), Registration of petition (Rule 48), Form of petition (Rule 49), Initiation of proceedings (Rule 50), Admission (Rule 51), Compelling attendance (Rule 52), Presence of alleged contemner (Rule 53), Release on bail (Rule 54), Procedure on forfeiture of the bond (Rule 55), Right to be defended by Legal Practitioner (Rule 56), Objections of the alleged contemner

(Rule 57), Inquiry and charge (Rule 58), Procedure of evidence (Rule 59), Trial of the alleged contemner (Rule 60) and Procedure on apology (Rule 65) etc.

Rule 47 provides that in a contempt other than the contempt referred to in Rule-45 (Contempt in presence of the Tribunal), the Tribunal may take action, either *suo-motu* or on a petition made by the Presenting Officer for the State Government, or on a petition made by any person. Here, the petition has been filed by Sri Vivek Swaroop.

Rule 50 provides that any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman, who shall determine the expediency or propriety of taking action under the Contempt Act.

Expediency or propriety of taking action under the Contempt of Courts Act, in the instant case:

The genesis of proposed contempt action is an order dated 29.06.2021 which provided that “considering the facts of the case, we do not think it proper to stay the DPC, which is scheduled for 01.07.2021. It is, however, directed, as an interim measure, that the sealed cover envelope of the petitioner for promotion to the post of grade pay of Rs.7600/- be opened before the DPC for the post of grade pay Rs.8700/- takes place. The recommendations of the sealed cover envelope be suitably acted upon for considering further promotion of the petitioner, as per rules”.

Submissions on behalf of the petitioner:

It is the submission of learned Counsel for the petitioner that the copy of the order dated 29.06.2021 was duly served upon the respondents on 30.06.2021, but the respondents did the following acts which clearly establishes their contemptuous act:

- (a) Did not open the sealed envelope of the Petitioner and conducted the DPC for pay grade Rs. 8700 on 01.07.2021 and this act of not opening the envelope of Petitioner is duly reflected in the minutes of Meeting of DPC for grade pay of Rs. 8700/- conducted on 01.07.2021.
- (b) Respondent No.2 passed another order dated 30.06.2021 modifying the impugned order dated 26.08.2020 in order to wriggle out of the order dated 29.06.2021 of this Tribunal.

It is also submitted on behalf of learned Counsel for the petitioner that the following facts establish that the order dated 30.06.2021 bearing dispatch number 159/XXVII(6)-TC/2075/Ch/2021 has been done deliberately to violate the order dated 29.06.2021 and to deny promotion to Petitioner:

- (i) The impugned order dated 26.08.2020 has been modified only after the order dated 29.06.2021 was passed by this Tribunal. Even in reply to the Application of the Petitioner seeking stay of DPC for pay grade of Rs. 8700/- in claim Petition no. 138/DB/2021, respondents have nowhere stated that the impugned order has to be amended. There is no explanation given by Respondents as to why the impugned order was not amended during last 10 months. Even when the Notices on the Claim Petition no. 138 of 2021 seeking quashing of order dated 26.08.2020 were issued, the Respondents did not modify the impugned order. Hence, the modification of the impugned order dated 26.08.2020 is an attempt to disobey the order dated 29.06.2021 of this Tribunal.
- (ii) Page No.144 (Copy of the note sheet) of the claim Petition No 138 of 2021 clearly demonstrates that the Petitioner was given special adverse entry for the year 2020-2021 after much deliberations and after taking all advices from concerned authorities and on taking approval from Hon'ble Minister.

Copies of the Note sheets dated 17.08.2020 and 24.08.2020 clearly demonstrate that the special adverse entry was given to the Petitioner after much deliberations. Why the impugned order dated 26.08.2020 was modified after the passing of the order dated 29.06.2021? In fact this act of modifying the impugned order dated 26.08.2020 by passing order dated 30.06.2021 demonstrates contemptuous act of the Respondents to not comply with the order dated 29.06.2021 of this Tribunal.
- (iii) For granting Special Adverse entry *vide* order dated 26.08.2020 due permission was taken from the Hon'ble Minister. However, while passing order dated 30.06.2021 neither any notice was given to Petitioner nor any permission was sought from the Hon'ble minister for changing the year from 2020-21 to 2014-15 against which the special adverse entry has to be read.

- (iv) If Petitioner is granted Special Adverse entry for the year 2014 –2015, in that case, as per Rules, the Petitioner will not be entitled for any promotion for next five years commencing from the year 2015, till 2020. Hence, in order to deny due right of promotion to the Petitioner, the Respondents have modified the impugned order dated 26.08.2020, that too, when the matter is subjudice.

Petitioner filed the Contempt Petition before this Tribunal and sought time to file the minutes of meeting of DPC for the grade pay of Rs 8700/-. In order to obtain the same, the Petitioner filed an application under RTI and sought the minutes of meeting of DPC for grade pay of Rs. 8700 and other documents. Respondents gave reply to such RTI application and provided certain documents to the petitioner.

When Petitioner filed the Contempt Petition and Petitioner sought documents through RTI, the respondents realized that they have committed contempt of order dated 29.06.2021, therefore, they indulged in backdating of the documents in order to save themselves from contempt action. Hence, in order to come out of the contempt, the Respondents have shown to have conducted a meeting dated 01.07.2021 for opening the sealed envelope of the Petitioner which is dated as 01.07.2021 and has a dispatch number of 159/XXVII(6)-TC/2075/Ch/2021. Authenticity of the date of this meeting is highly doubtful, for the following reasons:

- (i) When Dispatch number of Respondents Order dated 30.06.2021 is 330/XXVII(6)-380/1/2006/2021, dispatch number of promotion order pursuant to DPC for pay grade of Rs. 6600/- and of Rs. 8700/- dated 01.07.2021 is 321/XXVII(6)/940/1/2014/2021 & 319/XXVII(6)-1-1162-2015-2021 respectively, then how can the dispatch number of the meeting in question for opening sealed envelope of Petitioner be 159/XXVII(6)-TC/2075/Ch/2021. As matter of fact, the dispatch number of this meeting should also be either in the prefix, middle or suffix of these promotion orders. In fact, the dispatch number of alleged meeting dated 01.07.2021 for opening the sealed envelope of Petitioner clearly demonstrates that this meeting did not take place on 01.07.2021 alongwith other DPC for pay grade of Rs. 6600/- and of Rs. 8700/- and had this meeting taken place with

other two DPC meetings, then the dispatch number would have been similar.

- (ii) The minutes of this meeting for opening the sealed envelope of Petitioner itself establishes the contempt of order dated 29.06.2021, as in the minutes, the order dated 29.06.2021 has been mentioned which directs the respondents to open the sealed envelope before DPC for pay grade of Rs. 8700 but, it was categorically mentioned in the minutes of this meeting that the envelope of the Petitioner has not been opened. This act itself demonstrates wilful disobedience on the part of respondents.
- (iii) Wilful disobedience on the part of respondents is further demonstrated from the fact that in the note sheet dated 05.07.2021 available at Page No. 42 and 43 of the application of the Petitioner in contempt Petition it has clearly been mentioned in the note sheet that DPC for the grade pay of Rs 7600/- has not been convened so far and date for the same has to be fixed. Hence, if no DPC for grade pay of 7600/- was convened then how and when did the meeting dated 01.07.2021 to open the sealed envelope of the Petitioner take place. As a matter of fact, had this meeting dated 01.07.2021 to open the sealed envelope taken place, in that scenario it should have been mentioned in the Note sheet dated 05.07.2021, that a meeting took place on 01.07.2021 to open the sealed envelope. However, no such noting or comment *qua* meeting dated 01.07.2021 for opening the sealed envelope of the Petitioner could be found. This fact itself demonstrates wilful disobedience and back dating of the documents by the Respondents.
- (iv) In reply to the RTI application of the Petitioner at serial No.1, the Respondents have categorically stated that no minutes of meeting for DPC for promotion to the grade pay of Rs. 7600 has been prepared. As a matter of fact, had this meeting dated 01.07.2021 to open the sealed envelope taken place, in that scenario it should have been mentioned in the reply dated 14.07.2021 to the RTI Application of the Petitioner that a meeting took place on 01.07.2021 to open the sealed envelope. However, no such reply *qua* meeting dated 01.07.2021 for opening the sealed envelope of the Petitioner for the grade pay of Rs 7600 can be found. This fact itself demonstrates wilful disobedience and back dating of the documents by the Respondents.

- (v) On the minutes of DPC for grade pay of Rs. 6600/- as well as of Rs. 8700/-, signatures of all three members of the DPC can be found. However, surprisingly, on the minutes of meeting for opening the sealed envelope of the Petitioner only the signatures of the Secretary are there and signatures of other two members are not on these minutes.
- (vi) In the minutes of meeting dated 01.07.2021 for opening the sealed envelope of Petitioner, three members are shown to be present, *viz*, Secretary Finance, Joint Secretary, and Director Treasury & Pension. In fact, it is these three members who will constitute the DPC for grade pay of Rs 7600/- and if all three members were present, then why the envelope of the Petitioner was not opened as per directions given in order dated 29.06.2021 in this meeting of 01.07.2021.
- (vii) Copy of the minutes of meeting for opening the sealed envelope of the Petitioner has been marked to Secretary, Public Services Tribunal, Dehradun. Hence, had these minutes been prepared on 01.07.2021 and dispatched to Secretary, Public Services Tribunal, Dehradun, in that case the same should have reached here till now. In fact since these minutes had not been prepared on 01.07.2021, therefore the same has not reached Secretary, Public Services Tribunal, Dehradun till date and this fact itself raises serious doubt on the date and timing of the alleged minutes of meeting for opening the sealed envelope of the Petitioner.

Admission:

Rule 51 of the Rules of 1992 provides that where the Chairman decides that action should be taken against the Contempt Act against alleged contemner, a case shall be registered and the Registrar shall cause a notice to be issued to the alleged contemner in Form VII to appear before the Tribunal in person or through an Advocate on a date to be specified therein to show case against such proceeding. A copy of order made under sub-rule (1) and such other papers as may be deemed necessary by the Chairman shall accompany such notice. The notice shall bear the date and seal of the Tribunal and shall be issued under the signature of the Registrar.

Rule 52 provides that the notice of every petition or motion under the Contempt Act shall be served personally on the charged unless the Tribunal, for reasons to be recorded, directs otherwise.

Prima-facie, it is a case of non-compliance of the order dated 29.06.2021. There appears to be willful disobedience of the Tribunal's order dated 29.06.2021 on the part of alleged contemnors [who were members of DPC], for the reasons, as indicated by learned Counsel for the petitioner, a reference of which has been given in one of the foregoing paragraphs of this description, as above. It is, therefore, expedient on the part of this Tribunal to initiate action under the Contempt of Courts Act, 1971, to uphold the dignity of Courts and majesty of law. Propriety demands that a case should be registered as Contempt Petition (Civil) for the willful disobedience of Tribunal's order dated 29.06.2021.

Directions:

Register as Contempt Petition (Civil).

Issue notices to the alleged contemnors *viz.*, (1) Ms Saujanya, Secretary, Finance (2) Mr. Mahavir Singh, Joint Secretary, Personnel and (3) Mr. Pankaj Tiwari, Director, Treasury, Pension & Entitlement [Members of DPC], to appear before the Tribunal either in person or through an Advocate on 20.08.2021 to show cause against such proceeding.

A copy of this order, along with copy of contempt petition, enclosing the documents which the petitioner has filed in support of such petition, shall accompany such notices.

Let steps be taken within three days, for service of notices through registered post, acknowledgement due.

List on 20.08.2021.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 19, 2021.
DEHRADUN
KNP