

**BEFORE THE UTTARAKHAND PUBLIC SERVICES  
TRIBUNAL, BENCH AT NAINITAL**

Present : Sri V. K. Maheshwari

----- Vice Chairman (J)

&

Sri U.D. Chaube

----- Member (A)

**CLAIM PETITION NO. 05/N.B./2012**

Tarun Pandey, aged 33 years, S/o Late D.D. Pandey,  
R/o Model Colony, Street No. 2, Rudrapur,  
Udham Singh Nagar, Uttarakhand.

.....Petitioner

**VERSUS**

1. State of Uttarkahand through Principal Secretary Finance,  
Civil Secretariat, Dehradun,
2. Secretary Finance, State of Uttarakhand, Civil Secretariat,  
Dehradun,
3. Director, Treasury and Finance Services-cum-State Internal  
Audit, 23, Laxmi Road, Dalanwala, Dehradun,
4. Vijay Pratap Singh, Audit Officer, Mandi Parishad,  
Rudrapur

5. Aditya Narain Mishra, Audit Officer, Uttarakhand Forest Corporation, Dehradun
6. Govind Singh Negi, District Audit Officer, Pauri
7. Bhairav Dutt Tewari, District Audit Officer, Rudrapur
8. R.R. Singh, District Audit Officer, Haridwar

.....Respondents

Present: Ms. Menka Tripathi, Advocate for the petitioner.  
Sri V.P. Devrani, A.P.O for the respondent nos. 1  
to 3.  
None for the respondent nos. 4 to 8

### **JUDGMENT**

**DATE: April 02, 2014**

**DELIVERED BY SRI V.K. MAHESHWARI, VICE  
CHAIRMAN (J)**

The petitioner has challenged the order of awarding the adverse remarks dated 6.12.2010 passed by the Secretary, Finance, Government of Uttarakhand, Dehradun and order dated 3.1.2012 passed on representation against this remark by the Secretary, Finance, Government of Uttarakhand.

2. The facts in brief as are stated by the petitioner are that the petitioner is a District Audit Officer, Nainital and in the year

2009 he was deputed for a period of one month for doing the audit of work done at Haridwar for the Kumbh Mela 2010. After joining there, the petitioner found that the actual work did not even started, therefore, he had apprised the position to the Director, Treasury and Finance Services-cum-State Internal Audit (respondent no. 3) several times, but the petitioner was directed to continue there. The petitioner had also discussed the various issues regarding the audit with his adviser who was specifically appointed only for the petitioner. Taking note of the correspondence of the petitioner respondent no. 2 Secretary, Finance, State of Uttarakhand, Dehradun asked the Mela Adhikari for ensuring to make the measurement books and other records available to the audit team, so that the audit may be conducted. A letter was also written to the Principal Secretary for issuing direction to make the record available and further to direct the different work agencies to cooperate in the work of audit as they were not cooperating. Thereafter, some work of the audit was, however, done. The petitioner kept submitting the rough sheets as and when the audit was conducted. Regular reports were also submitted. A discussion with advisor revealed that the audit work would take about 2-3 months while the petitioner was posted only for one month but the petitioner continued as per direction of the senior officers.

3. All of sudden, a notice dated 21.1.2010, was served upon the petitioner calling for the explanation as to why rough sheets have not been submitted by him and further for ensuring certain points in respect of the procurement process.

4. Meanwhile, the petitioner's wife got seriously ill and the petitioner availed causal leave from 24.1.2010 to 2.2.2010 and thereafter joined on 3.2.2010. The petitioner further requested for his transfer on the ground of illness of his wife but all in vain.

5. However again an explanation was called from the petitioner vide letter dated 17.2.2010 as to why the petitioner has not performed the audit work properly. The petitioner had submitted his reply on 6.3.2010 but after considering the reply of the petitioner, the impugned adverse remark was awarded against the petitioner on 6.12.2010 which reads as follows:-

“कुम्भ मेला 2010 के सम्बन्धी ऑडिट कार्य में आदेशों की अवहेलना करने, दिये गये दायित्वों का निर्वहन न करने एवं शासकीय दायित्व एवं कर्तव्यों के प्रति लापरवाही व अनुशासनहीनता बरतने के लिये श्री तरुण पाण्डे जिला संप्रेक्षा अधिकारी नैनीताल (स्थानीय निधि लेखा परीक्षा प्रभाग) की परिनिन्दा की जाती है।”

The petitioner had submitted his representation against the adverse remark and submitted that the awarding the adverse

remark is illegal but the representation of the petitioner was also dismissed vide order dated 3.1.2012 illegally.

6. The petitioner has challenged the order of awarding the adverse remark and order passed on representation on the following grounds:-

(a) that the censure remark has been awarded to the petitioner in absence of any evidence on record about negligence on the part of the petitioner in discharge of duties. In fact, the petitioner has been made scapegoat only,

(b) that the petitioner had worked with sincerity and devotion but despite several instructions orally as well as in writing the work agency did not cooperate with the Audit Team,

(c) that the representation of the petitioner was decided after a period of one year which is not proper and is against the rules,

(d) that the representation of the petitioner has been decided by same officer who awarded the adverse remark which is also against the rules,

(e) that the act of awarding the adverse remark is in violation of principles of natural justice.

7. On the basis of the abovementioned grounds, the petitioner has requested for setting-aside the order of awarding the adverse remark as well as order passed on his representation.

8. Petition is opposed on behalf of the respondent nos. 1 to 3 and it has been stated that the petitioner was appointed for conducting the concurrent audit of the work of Kumbh Mela 2010 at Haridwar vide order dated 23.6.2009, but the petitioner did not perform his duties sincerely and remained almost absent. When the fact of remaining absent from work of the audit and exercising negligence in the discharge of duties came to the notice of Director , a show-cause notice under Rule 10 of **Uttar Pradesh Government Servants (Punishment and Appeal) Rules, 1999** was issued against the petitioner vide order dated 17.2.2010 and was asked to submit his explanation on the following points:-

- (a) for not submitting the audit report,
- (b) for not cooperating with the technical team,
- (c) for not conducting the work as per the procedure. As Financial Audit was done prior to the technical audit.
- (d) for not submitting the daily rough sheets to the Government.

9. The petitioner had submitted reply on 6.3.2010, in which it was admitted that he could not discharge his duties as was expected. Because of the admission by the petitioner, his reply was found baseless and an adverse remark was awarded to him by a detailed and reasoned order. As only a minor penalty has

been imposed upon the petitioner and there is no illegality or irregularity in awarding the same. It is further pleaded that the petitioner should have made representation against the adverse remark within a period of 45 days, but he did not make any representation within the prescribed time. He made a representation after the prescribed time so his representation was found to have been infructuous, consequently was dismissed. It has been stated that the petition has been filed without any basis, therefore, there are no ground for interfering in the impugned orders and the petition is liable to be dismissed.

10. Rejoinder affidavit has also been filed on behalf of the petitioner and facts stated in the claim petition have been reiterated. Apart from the rejoinder affidavit, a supplementary affidavit has also been filed on behalf of the respondent nos. 1 to 3.

11. We have heard Ms. Menka Tripathi, Advocate for the petitioner and Mr. V.P. Devrani, A.P.O. for the respondent nos. 1 to 3 and perused the evidence on record carefully. As none appeared on behalf of the respondent nos. 4 to 8, the petition proceeded ex-parte against them.

12. It is clear from the record that the petitioner was expected to commence the work of concurrent audit on 1<sup>st</sup> July, 2009 but it was not done. The work of concurrent audit was to be completed

within a period of one month but there is nothing on record which could reveal the progress of the work done during that period of one month, so the petitioner has failed to prove that he has done any work within a period of one month. He has filed his first letter which is dated 19.8.2009 and the first and first report which is dated 11.9.2009; both are after the period of one month. But without going into the merits of the factual aspects, the petition deserves to be allowed on two technical grounds which are given as follows:-

(i) The impugned order of awarding the adverse remark was passed by the Secretary, Finance on 6.12.2010 (copy Annexure A-2). The petitioner had preferred a representation dated 11.02.2011 (copy Annexure A-26) against this order. This representation was addressed to the Principal Secretary, Finance and as per the rules the representation should have been decided by higher officer, but the representation of the petitioner has been decided by Secretary, Finance, vide its order dated 3.1.2012. The decision on the representation of the petitioner by the same authority which had awarded the remark cannot be treated proper. In fact it is against the rules. In this connection, it is pertinent to refer the Rule-4 (2) of THE UTTARANCHAL GOVERNMENT SERVANTS (DISPOSAL OF REPRESENTATION AGAINST ADVERSE ANNUAL CONFIDENTIAL REPORTS AND ALLIED MATTERS) RULES, 2002, which reads as follows:-



“4. (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.”

Thus, from the perusal of above rule, it becomes clear that the representation of the petitioner should have been decided by an officer who had been one rank senior to the reporting officer, but in the present case the procedure had not been followed. The representation has also been decided by the same authority therefore, it vitiates the impugned order of awarding the adverse remark also.

(ii). Secondly, the representation of the petitioner against the remark should have been decided within a period of 120 days and if it is not done so the adverse remark cannot be read against the petitioner for the purposes of promotion etc. In this connection, the Rule-4 (4) and (5) of **THE UTTARANCHAL GOVERNMENT SERVANTS (DISPOSAL OF REPRESENTATION AGAINST ADVERSE ANNUAL CONFIDENTIAL REPORTS AND ALLIED MATTERS) RULES, 2002**, are material which are reproduced below:-

- “4.(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). Where the competent authority due to any administrative reasons, is unable to dispose of the representation within the period specified in sub-rule (4) he shall report in this regard to his higher authority, who shall pass such orders as he considers proper for ensuring disposal of the representation within the specified period.”

In the present case, the petitioner had made a representation on 11.2.2011 (copy Annexure A-26) and it has been decided almost after a period of one year i.e. on 3.1.2012 (copy Annexure A-1). As the representation has not been decided within the stipulated time of 120 days, the disposal of the representation cannot be said to be proper and the said adverse remark cannot be read against the petitioner. On this ground also the process gets vitiated and adverse remark or the order passed

on representation of the petitioner can not be read against him. It has also been contended on behalf of the respondent nos. 1 to 3 that the petitioner himself had submitted representation after the expiry of the prescribed time so he can not claim any benefit on the ground of any delay in the disposal of the representation. It is said that the petitioner should have made the representation within a period of 45 days from the date of communication of the adverse remark, the said adverse remark was communicated to the petitioner in the year 2010 itself but the petitioner had not preferred any representation within 45 days. Thus the petitioner himself caused delay in preferring the representation and so there is no delay in the disposal of the representation of the petitioner. We do not find any force in the contention of the respondent nos. 1 to 3. The respondent nos. 1 to 3 cannot blame the petitioner for submitting the representation with delay, once the representation was submitted it was obligatory upon the respondent nos. 1 to 3 to decide the representation within a period of 120 days which has not been done, so no benefit can be extended to the respondent nos. 1 to 3 on this ground. We hold that the adverse remark can not be read against the petitioner so it should be expunged.

13. On the basis of above discussion, we are of the firm view that the petition deserves to be allowed and the impugned order dated 6.12.2010 (Annexure-1) as well as the order dated

3.1.2012 passed on the representation are liable to be quashed and the adverse remark is liable to be expunged.

**ORDER**

Petition is allowed. The impugned orders dated 6.12.2010 (Annexure-2) and order dated 3.1.2012 (Annexure-1) are hereby set-aside. The adverse remark should be expunged from the character roll of the petitioner within a period of three months. No order as to costs.

Sd/-

U.D. CHAUBE  
MEMBER (A)

Sd/-

V.K.MAHESHWARI  
VICE CHAIRMAN (J)

DATE: April 02, 2014

B.K.