

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 27/NB/DB/2019**

Kranti Singh aged about 37 years, s/o Sri Anand Suman Singh, presently posted as Assistant General Manager, Uttarakhand Transport Corporation Limited, Dehradun.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Department of Transport, Uttarakhand Secretariat, Dehradun.
2. Uttarakhand Transport Corporation through its Managing Director, 1 Raj Vihar, Chakrata Road, Dehradun.
3. General Manager (Administration/Personnel), Uttarakhand Transport Corporation, 1 Raj Vihar, Chakrata Road, Dehradun.

.....Respondents

Present: Sri Dushyant Mainali, Advocate, for the petitioner  
Sri Kishore Kumar, A.P.O. for the respondent no. 1  
Sri Ashish Joshi, Advocate for the respondents no. 2 & 3

**JUDGMENT**

**DATED: JANUARY 24, 2023**

**Per: Sri Rajeev Gupta, Vice Chairman (A)**

This claim petition has been filed seeking the following reliefs:

*i) To set aside the impugned decision dated 28.02.2019 taken by the Selection Committee for departmental promotion for the post of Deputy General Manager, so far as it relates to the petitioner.*

*ii) To issue a direction directing the respondents to hold the departmental promotion committee for promotion on the post of Deputy General Manager (Operation/Personnel) and to consider the case of the petitioner afresh in terms of the merit as provided under Uttarakhand State Services (Beyond the Ambit of Public*

*Service Commission) Selection Process for Promotion Rules, 2013.*

*iii) To issue any other or further direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*iv) To award the cost of the petition in favour of the petitioner.*

2. The brief facts of the case are as below:

The petitioner was considered for promotion on the post of Deputy General Manager (Operation/Personnel) in the Departmental Promotion Committee (DPC) meeting dated 28.02.2019, wherein he was not found fit for promotion to this post according to the provisions of Govt. Notification No. 43 dated 09.01.2013. The minutes of this DPC are enclosed as Annexure No. 1 to this claim petition.

Vide the above Notification dated 09.01.2013, Uttarakhand State Services (Beyond the Ambit of Public Service Commission) Selection Process for Promotion Rules, 2013 (hereinafter referred to as 'the Rules of 2013') were notified. According to the Uttarakhand Transport Corporation Officers Service Regulations, 2009, promoting to the posts of General Manager (Operation) and General Manager (Technical) are made on the basis of merit and to other posts on the basis of merit and seniority subject to the rejection of unfit. Therefore, the criteria for promotion to the posts of Deputy General Manager (Operation/Personnel) was merit and seniority subject to the rejection of unfit.

The petitioner's Annual Confidential Reports (ACRs) for the years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 were of 'Uttam', 'Achchha', 'Achchha', 'Utkrisht' and 'Uttam' categories respectively.

3. According to Supplementary Counter Affidavit filed on behalf of respondents no. 2 and 3, the petitioner's entries of 2014-15, 2015-16 were of 'Achchha' category, which is below 'Uttam' category and, therefore, he was declared unfit by the DPC as per Rule 3 of the Rules of 2013.

4. The petitioner's contention is that uncommunicated ACRs should not have been treated to be adverse against him by the DPC. The respondents no. 2 and 3 in their Counter Affidavit have stated that the petitioner himself demanded copies of his ACRs of last four years under Right to Information Act vide his letter dated 22.02.2017 and these four entries were provided to him vide letter dated 10.08.2017 of the Public Information Officer. Even otherwise, the petitioner applied for deputation in November 2018 to All India Technical Education Board and for his application, the department has given him No Objection Certificate and five years ACRs vide letter dated 30.11.2018. Thus, the petitioner was well aware about his ACRs but he did not make any representation against those ACRs before the competent authority.

5. Regarding these contentions, the petitioner has submitted that ACRs under RTI were provided to him as information without any extant direction for submitting representation. Further regarding his application for a post on deputation to the All-India Council for Technical Education (AICTE), the NOC and the attested copies of last five years' ACRs were to be provided 'in a sealed cover', and the petitioner had no clue to the contents of the NOC and the ACRs provided.

6. The Uttarakhand Govt. issued the Uttarakhand *Sarkari Sewak (Pratikool, Achchha/Santoshjanak, Uttam, Atiuttam, Utkrishta Varshik Gopaniya Reporton Ka Prakatikaran Evam Uske Virudhh Pratyavedan Aur Sahbaddh Mamlon Ka Niptara) Niyamawali*, 2015 (hereinafter referred to as Rules of 2015), which was followed in the respondent corporation vide letter dated 09.01.2018 of its Managing Director. This letter of the Managing Director also contained a directive by the Chief Secretary vide his office letter no. 273 dated 28.10.2016 which clearly states that every government servant must be communicated all the ACRs and provides for representation against such communicated ACRs. While the respondent corporation has communicated petitioner's ACRs to him for 2017-18 and 2018-19 vide letters dated 18.05.2018 and 20.08.2020 but no other ACRs

have been communicated to him. Rule-4 of the Rules of 2015 provides a time line of 60 days for communication of ACRs. Rule-5 of the Rules of 2015 provides that if ACR is not communicated as per the Rule-4, the same shall not be considered as 'adverse' for the purpose of promotion and other service benefits.

If the petitioner's ACRs would have been communicated to him within reasonable time and subsequently he had been given a chance to represent against them, he would have definitely got upgradation of his ACRs entries and would have been declared fit and promoted to the post of General Manager (Operation/ Personnel) in the DPC held on 28.02.2019.

7. The petitioner has referred to the judgment of Hon'ble Supreme Court in Sukhdev Singh vs. Union of India and others reported in (2013) 9 SCC 566 and Rukhsana Shaheen Khan vs. Union of India and prayed to grant him promotion to the post of Deputy General Manager (Operation/Personnel) from the same date as that of his fellow colleagues as a result of the DPC dated 28.02.2019. The petitioner has also produced a copy of the decision rendered by the Hon'ble Supreme Court in Civil Appeal Nos. 5340-5341 of 2019, Pankaj Prakash vs. United India Insurance Co Ltd & Anr. Dated 10.07.2019, regarding communication of ACRs and representations against the same, which is reproduced as below:

"1 Leave granted.

2 The dispute in the present case arises from the appellant's claim for promotion from Scale III to Scale IV in the services of the respondents. The year of promotion is 2014-2015.

3 The grievance of the appellant is that the entries in his Annual Performance Appraisal Report<sup>1</sup> for 2010-11 and 2011-12 were not disclosed, as a result of which he was unable to submit a representation at the material time. The appellant had the following gradings in the APARs:

- (i) 2010-2011 "C"
- (ii) 2011-2012 "B"
- (iii) 2012-2013 "A"
- (iv) 2013-2014 "A"

4 Relying on the two-judge Bench decision of this Court in Dev Dutt v Union of India (2008)8 SCC 725 and the subsequent decision of the three-judge Bench in Sukhdev Singh v Union of India (2013) 9 SCC 566, the appellant contended that the failure to communicate the entries for 2010-11 and 2011-12 is contrary to the

law laid down by this Court. Moreover, it has been submitted that on 14 May 2009 and 13 April 2010, the Union of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) had issued directions for implementation of the decision in *Dev Dutt (supra)*. Thereafter, on 19 October 2012, the Union of India in the Ministry of Finance (Department of Financial Services) had drawn the attention of public sector insurance companies to the earlier Office Memorandum dated 14 May 2009 seeking immediate compliance. In this background, it has been submitted that the High Court of Judicature at Allahabad, which was moved by the appellant in proceedings under Article 226, was in error in coming to the conclusion that absent an adverse entry or an entry below the benchmark, the failure to communicate did not result in an actionable grievance. The High Court dismissed the writ petition by its judgment dated 6 October 2016 as well as the review petition by its judgment dated 17 January 2017. The present proceedings were instituted assailing the judgments of the High Court.

5 In the counter affidavit filed on behalf of the respondent, it has been stated that following a circular dated 18 March 2014, all public sector insurance companies have disclosed APARs since appraisal year 2013-14. It has been submitted that in consequence, there was no necessity to disclose the APARs to the appellant for the relevant years (2010-11 and 2011-12).

6 Adopting the line of submission which has been set out in the counter affidavit, Mr P P Malhotra, learned senior counsel appearing on behalf of the respondents, submitted that in terms of the Promotion Policy for Officers – 20064, promotions from Scale III to Scale IV are based on (i) a written test; (ii) the work record; and (iii) seniority. It was submitted that in the present case the appellant failed to fulfill the cut-off for promotion of 68.98 marks, as disclosed to him on 9 September 2014.

7 Dr. Manish Singhvi, learned senior counsel appearing on behalf of the appellant, submitted that the defence which has been set out on behalf of the respondent has no substance since, following the law laid down by this Court in *Dev Dutt (supra)*, all entries in the APARs are required to be communicated. Non-communication of the entries, in the present case, is a matter of prejudice since the communication dated 9 September 2014 indicates that, in appraising his work record, the appellant was given 40.15 marks out of a maximum of 45. This indicates that the uncommunicated entries for 2010-11 and 2011-12 have weighed against him.

8 While assessing the rival submissions, we must, at the outset, note that the law laid down by the two-judge Bench of this court in *Dev Dutt (supra)* has been reaffirmed by three judges in *Sukhdev Singh (supra)*.

In *Sukhdev Singh (supra)*, this Court held:

“8. In our opinion, the view taken in *Dev Dutt [Dev Dutt v. Union of India, (2008) 8 SCC 725 : (2008) 2 SCC (L&S) 771]* that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good— must be communicated to him/her within a reasonable period.”

9 The Union of India had also issued Office Memoranda on 14 May 2009 and 13 April 2010 seeking compliance by all Ministries and Departments. Moreover, on 19 October 2012, a specific communication was also addressed to public sector insurance companies. Even independent of these communications, the respondent was duty bound to comply with the law laid down by this Court. They

cannot urge that the decision having been implemented from 2013-14, it has no application for the earlier years. The judgment of this Court is declaratory in nature.

10 Learned senior counsel appearing on behalf of the respondent, while placing reliance on the disclosure made to the appellant on 9 September 2014, submitted that even if a communication were to be made, no difference would result in the ultimate outcome. Mr. Malhotra urged that the promotion for 2014-15 depended on the APARs for 2011-12, 2012-13 and 2013-14.

11 The relevant part of the communication dated 9 September 2014 provides thus:

"1. The marks secured by you in the Promotion Exercise 2014-15 is as under:

	Normal Channel	Fast Track
Written Test	20.1	26.81
Work Record (WR)	40.15	35.69
Seniority	4.2	N/A
Interview	N/A	16
Total	64.45	78.5

2. The cut-off marks for promotion (Scale III to IV) is as under:

Normal Channel	68.98
Fast Track	84.14"

12 The above communication indicates that for the normal channel, with which we are concerned, the appellant secured 64.45 marks against the cut-off of 68.98 for promotion from Scale III to Scale IV.

13 Admittedly, for one of the years under consideration (2011-12) for the promotional exercise for 2014-15, the appellant was graded a "B", while for the subsequent two years, he was graded an "A". Consequently, the fact that the appellant was given a lower grading for 2011-12 would materially affect whether or not he should be promoted from Scale III to Scale IV for the year in question. The non-communication of the entries is, therefore, a matter in respect of which a legitimate grievance can be made by the appellant, particularly having regard to the position in law laid down in *Dev Dutt (supra)* and *Sukhdev Singh (supra)*.

14 The next question to consider is the substantive relief which should be granted to the appellant. The promotional exercise of 2014-15 has been completed. The appellant has since been promoted in 2018. The ends of justice would be made if a direction is issued to the respondent to consider the representation, if any, that may be submitted by the appellant in respect of the grading which was assigned to him for the relevant years which were taken into consideration during the promotional exercise for 2014-15.

15 We issue the following directions:

- (i) Within a period of one month from the date of receipt of a certified copy of this order, the respondent shall communicate to the appellant the uncommunicated entries in the APARs for the years which were taken into account for the promotional exercise of 2014-15;
- (ii) Within a period of two months from the date of receipt of the above, it would be open to the appellant to submit his objections and representation to the respondent;
- (iii) The representation shall be considered within a period of three months from the date of receipt of the representation;
- (iv) Thereafter, based on the result of the decision, the competent authority shall take a decision on whether any modification in the decision for promotion from Scale III to Scale IV for 2014-15 in respect of the appellant is warranted; and
- (v) In order to ensure that this exercise is carried out fairly, we direct that the competent authority shall ensure that the representation that is submitted by the appellant is placed before an authority at a sufficiently senior level to obviate any bias or injustice.

16 The impugned judgments and orders of the High Court are set aside. The appeals are allowed in the above terms. There shall be no order as to costs."

8. According to the ratio of the judgment of the Hon'ble Supreme Court mentioned above, the Tribunal observes that the petitioner should be given an opportunity to represent against the entries of the years which were taken into consideration for the promotional exercise in the DPC held on 28.02.2019 and seek their upgradation. These ACRs are for the years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. The entries for the years 2013-14, 2014-15 and 2015-16 have been provided to the petitioner under RTI and for the year 2017-18 has been communicated to him vide corporation's letter dated 18.05.2018. His entry for the year 2016-17 is already of 'Utkrisht' category. The petitioner may make representations for upgradation of his entries to the Chairman of the respondent corporation within a period of two months from the date of this order. Such representations shall be considered within a period of three months from the date of their receipt. If as a result of such consideration, any ACR of the petitioner is upgraded, a review DPC shall be held soon thereafter to review the decision of the DPC dated 28.02.2019 which had held the petitioner unfit for promotion and to consider granting him promotion to the post of DGM (Operation/Personnel) from the same date on which other candidates recommended by the DPC dated 28.02.2019 for the post of DGM (Operation/Personnel) have been promoted.

9. With the above directions, the claim petition is disposed of. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATED: JANUARY 24, 2023*  
*DEHRADUN.*  
*KNP*