

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
DEHRADUN BENCH AT NAINITAL**

**Claim Petition No. 08/NB/DB/2013**

D.C. Pandey, S/o Shri R.C. Pandey,  
District Information Officer, Champawat,  
District Champawat.

.....Petitioner

Versus

1. State of Uttarakhand, through Secretary Information,  
Uttarakhand Shasan, Dehradun.
2. Director General Information and Public Relation Department,  
Uttarakhand, Dehradun.

.....Respondents

**Coram : Hon'ble Mr. Justice J.C.S. Rawat**

----- Chairman

&

**Hon'ble Mr. U.D. Chaube**

-----Member (A)

Present : Sri Alok Mehra, Advocate for the petitioner.  
Sri V.P. Devrani, A.P.O. for the respondents.

**JUDGMENT****DATED: 30<sup>th</sup> July, 2015****(Delivered by Hon'ble Mr. U.D. Chaube, Member (A))**

The petitioner has filed this petition for seeking the following reliefs:-

a) To set-aside the impugned orders dated 13.03.2012 and 19.11.2012 passed by respondent no. 2 and 1 respectively (Annexure No. 1 & 2 to Compilation No. 1).

b) To consider and promote the petitioner on the post of Assistant Director w.e.f. 24.05.2012 i.e. the date from which other Information Officers/District Information Officers was promoted to the post of Assistant Director.

c) To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

d) To allow the claim petition with cost.”

2. The facts of the case are as given herein. The petitioner was appointed as Junior Clerk in the department in the year 1974. The petitioner was thereafter promoted on the post of Upper Divisional Clerk in the year 1976 and in the year 1979 the petitioner was promoted to the post of Hindi Translator in the department. The petitioner was thereafter promoted to the post of District Information Officer w.e.f. 7.6.2001. The petitioner has alleged that while the

petitioner remained posted as District Information Officer in Bageshwar, one employee posted as Account Clerk in his office, named as Madan Mohan Lal Arya was in the habit of insubordination, not doing his work sincerely, caused an atmosphere of indiscipline, the cash-book entry and accounts maintenance work of the office was badly affected. A preliminary inquiry was held in the matter through Finance and Accounts Officer of the Department. In the preliminary inquiry, the enquiry officer recommended for holding a detailed enquiry which was held by Senior Treasury Officer of the District Bageshwar. On the basis of these inquiry reports the respondent no. 2 issued a show-cause notice to the petitioner on 06.06.2011 to give his explanation and the petitioner submitted his reply on 22.06.2011. The respondent no. 2 passed an order dated 13.03.2012 whereby he awarded an adverse entry in the service-book of the petitioner. The petitioner submitted a representation against the adverse entry, which was rejected by the respondent no. 1 on 19.11.2012.

3. The petitioner has further alleged that there are eight sanctioned posts of Assistant Directors in the department and as per the service rules six posts are to be filled from amongst eligible Information Officer/District Information Officers. A departmental promotion committee was held and four Information officer/District Information Officers were promoted on the post of Assistant Director, but the case of the petitioner was not considered though he was eligible to be considered for promotion. Feeling aggrieved by his non-consideration for promotion to the post of Assistant Director, the petitioner moved

several representations to the respondent no. 1. In his representations the petitioner has specifically stated that since he has filed representation against the award of special adverse entry within the time prescribed under rule and the said representation has not been decided within the time specified in the rules as such the adverse entry shall not be treated adverse for the purpose of promotion and the petitioner be promoted on the post of Assistant Director as he is otherwise eligible. That vacancies on the post of Assistant Director are vacant and the petitioner is eligible to be considered for promotion on the said post, but the case of the petitioner for promotion was not considered since a special adverse entry was awarded to him.

4. Against the claim petition the respondents have filed the counter affidavit and written statement on 30.08.2013 in which it has been averred that the orders passed by the respondents are as per law. The petitioner had committed irregularities during his tenure of service in Bageshwar as District Information Officer. A preliminary inquiry about the irregularities was made by the Finance and Account Officer of the department. In the preliminary inquiry, the inquiry officer found the prima facie charges proved. He recommended for detailed inquiry. Then a detailed inquiry was made by the Senior Treasury Officer, assisted in the said inquiry by the District Panchayat Raj Officer. In this joint inquiry the charges were proved against the Accountant Madan Mohan Lal Arya and the petitioner Dhiresh Chandra Pandey. Thereafter the disciplinary authority provided one further opportunity to the petitioner to present his defence and issued a show-cause notice

on 06.06.2011, which was replied by the petitioner on 22.06.2011. But this reply was also not found satisfactory and only thereafter the petitioner was given a punishment of special adverse entry. Thus, the punishment has been given under the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003.

5. Against the said adverse entry the petitioner submitted a representation to the Appellate Authority on 13.04.2012 and the Appellate Authority rejected the said representation through a reasoned and speaking order on 19.11.2012. Against the said impugned orders this petition filed by the petitioner is liable to be dismissed with cost. So far as the promotion to the post of Assistant Director is concerned, the petitioner has not been superseded by any of his juniors, only those officers who were senior to the petitioner were promoted and the petitioner was not found fit for promotion. The petitioner has since then been retired on superannuation and the special adverse entry awarded to him while on service, has now no significance after he has retired from service.

6. We have heard the learned counsel for the parties and perused the records. The learned counsel for the petitioner contended that the petitioner has denied all the charges for which he has been held partially responsible, by filing a detailed reply, but the respondent no. 2 without considering his reply has given him special adverse entry. The petitioner moved a detailed representation against the said special adverse entry which has not been decided within the prescribed time

period given in the Uttarakhand Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002. In Rule-5 of the said rules, it has been stated that where an adverse report is not communicated or a representation against an adverse report has not been disposed off in accordance with Rule-4, such report shall not be treated adverse for the purpose of promotion, crossing of efficiency bar and other service matters of the government servant. The petitioner has not been promoted due to the said adverse entry, while as per Rule-5 of the rules; this adverse entry should not have been the basis of denying him promotion.

7. Refuting the contention the learned A.P.O. has contended that before awarding the special adverse entry a preliminary inquiry and a detailed inquiry has been made in the matter and the special adverse entry has been given as a minor punishment under the Uttarakhand Government Servants (Punishment and Appeal) Rules, 2003. On the date of issuance of promotion i.e. 24<sup>th</sup> May, 2012 the officers who were promoted are senior to the petitioner and the petitioner has not been promoted due to non-availability of annual confidential reports of the petitioner for five years in continuation. The Rule-5 of the Uttarakhand Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 does not apply in the case of the petitioner.

8. The records relating to the D.P.C. and the special adverse entry were also summoned. Perusing the records of the D.P.C. it transpires that the D.P.C. was held on 5<sup>th</sup> September, 2011 and before the D.P.C. the final seniority list of the officers was also published on 30<sup>th</sup> August, 2011. From the proceedings of D.P.C., it has come-out that there were seven posts of Assistant Directors out of which one post was already filled by an officer of scheduled caste category. Out of the remaining six posts of Assistant Directors, one post was further to be filled by a scheduled caste candidate, but such a candidate was not available in the list of eligible officers. Hence only five posts of Assistant Directors were to be considered for promotion. Out of the said five posts, four posts were cleared for promotions to four officers on the basis of seniority subject to rejection of unfit. All these four officers recommended for promotion were indisputably senior to the petitioner. After these four officers who were recommended for promotion the next name figured in the seniority list was the name of the petitioner. But the petitioner was not found fit for being considered for promotion on the norms of promotions prescribed under the Uttarakhand Procedure of Selection for Promotion in the State Services (Outside the Purview of the Public Service Commission) on the basis of seniority and merit subject to the rejection of unfit (Procedure) Rules, 2009. The D.P.C. decided that the said post shall be kept in abeyance and promotion to this post shall be considered in future. The D.P.C. did not consider any name of aspirants who were junior to the petitioner.

9. So far the petitioner's fitness for being considered for promotion was concerned the following extract of the Uttarakhand Procedure of Selection for Promotion in the State Services (Outside the Purview of the Public Service Commission) on the basis of 'Seniority' and 'Merit', Subject to the Rejection of Unfit, (Procedure) Rules, 2009 are relevant.

**Procedure of selection on the basis of seniority—**

Rule No. 3 (1) The Departmental Promotion Committee shall

consider the names of the candidates, included in the eligibility list, prepared under the provisions of Rule 5 of the Uttaranchal Promotion By Selection (On Posts Outside the Purview of Public Service Commission) Eligibility List Rules 2003, for promotion on the basis of 'Seniority' or 'Seniority-Cum-Merit, subject to rejection of unfit. First of all, the name of the senior most officer shall be considered and after declaring him/her 'fit' or 'unfit, followed by the second and third officer and so on till required number of suitable officers are available for promotion against the vacancies. When the desired officers for promotion become available, the names of the officers thereafter need not to be considered.



Rule No. 3 (2) For the purpose of this procedure, the available

up to date entries of the concerned officers for the period of last ten years on the post just below the promotional post shall be considered and if the entries of less than 10 years only are available, all the available entries shall be considered.

- 3(3) If five or more entries out of the preceding '10 years' entries in the character roll of a candidate, included in the field of eligibility are classified as 'Good' or 'Higher' Category and the entries of two years immediately preceding the year of consideration are not adverse, such candidate shall be declared 'fit' for promotion by the Departmental Promotion Committee.
- 3(4) If in the annual confidential entry in any year or by special adverse entry, the integrity of any candidate is mentioned as doubtful, such candidate shall not be considered eligible for promotion upto 5 years from the year, in which such entry has been made.
- 3(5) In case of promotion to be made as above, the candidate cannot claim his promotion purely on the basis of seniority as a matter of right. If he is proved to be unfit for the post in accordance with the above criterion, the Selection Committee may

recommend the employee junior to him/her for promotion.

3(6) After considering the eligible candidates by the Departmental Promotion Committee and declaring them as 'fit' or 'unfit', the candidate declared 'fit' shall be recommended for promotion in order of his/her seniority.

Further Rule 5 of the aforesaid Rules provides as under:-

**Rule 5. Availability of minimum annual entries for the selection on the basis 'merit' and "seniority subject to the rejection of unfit"—**

Annual entries of at least 06 years out of the last ten years entries during the period of service on the post just below the promotional post must be available.

10. Now, going through the proceedings of the D.P.C. meeting held on 05.09.2011, the eligibility of the petitioner has been adjudged as follows :

3. समिति के संज्ञान में लाया गया कि सूचना विभाग में वर्तमान में सहायक निदेशक के 07 पद रिक्त हैं। नियमावली में उपरोक्तानुसार प्राविधानित व्यवस्था के अन्तर्गत 6 पदों पर सूचना अधिकारी/जिला सूचना अधिकारी एवं फीचर लेखक से पदोन्नति की जानी है। कार्मिक विभाग के शासनादेश संख्या-1455/कार्मिक-2/2001 के अनुसार पदोन्नतियों में आरक्षण नीति को लागू करने हेतु निर्धारित रोस्टर क्रमांक-01, जो अनुसूचित जाति हेतु आरक्षित है, पर पूर्व में पदोन्नति प्रदान की जा चुकी है। अतः रोस्टर क्रमांक-2, 3, 4, 5, 6 एवं 7 पर पदोन्नति प्रदान की जानी है। रोस्टर क्रमांक-6 जो

अनुसूचित जाति हेतु आरक्षित है, के पद पर पदोन्नति हेतु पोषक संवर्ग में अनुसूचित जाति का कोई अभ्यर्थी उपलब्ध नहीं है। अतः एक पद अग्रणीत किया जाना होगा तथा सामान्य संवर्ग के 05 पदों पर पदोन्नति प्रदान की जानी है।

4. पात्रता क्षेत्र में ज्येष्ठता क्रम में निम्नलिखित अधिकारी आते हैं :-

1. श्रीमती हंसी ब्रजवासी
2. श्री योगेश मिश्रा
3. श्री भगवान प्रसाद धिल्लियाल
4. श्री हर्ष मोहन धिल्लियाल
5. श्री धीरेश चन्द्र पाण्डेय
6. श्री दीपक कुमार जोशी
7. श्री पद्मादत्त पाण्डेय
8. श्री मलकेश्वर प्रसाद कैलखुरी
9. श्री नितिन उपाध्याय
10. श्री मनोज कुमार श्रीवास्तव
11. श्री रवि विजारनियां

5. समिति क संज्ञान में लाया गया कि सहायक निदेशक के रिक्त पदों पर पदोन्नति हेतु पात्रता क्षेत्र में आने वाले अधिकारियों में श्री धीरेश चन्द्र पाण्डेय की कुल 05 वर्ष से कम की वार्षिक प्रविष्टियां उपलब्ध थी तथा वर्ष 2004-2005, 2005-2006, 2006-2007, 2007-2008 एवं वर्ष 2008-2009 की वार्षिक प्रविष्टियां अप्राप्त हैं। नियमानुसार कम से कम 06 वर्ष की प्रविष्टियां उपलब्ध होनी चाहिए। अध्यक्ष, विभागीय पदोन्नति चयन समिति द्वारा निर्देशित किया गया कि किस कारण इनकी प्रविष्टियां उपलब्ध नहीं है? अवगत कराया जाय। श्री पाण्डेय की प्रविष्टियां उपलब्ध न होने के कारण सामान्य संवर्ग का 01 पद आस्थगित रखते हुये आगामी पदोन्नति चयन समिति में विचार करने का निर्णय लिया गया।”

Thus, the name of the petitioner was not considered for promotion in the meeting of the D.P.C. as the annual entries of his Confidential Reports relating to the years from 2004-05 to 2008-09 were not available. The post was kept in abeyance and it was decided by the D.P.C. that promotion to the said post shall be considered in future. There is no mention of the special adverse entry in the proceedings of the D.P.C.

11. It is also to be noticed that the said special adverse entry was not in existence on the date of D.P.C. meeting, since the adverse entry was awarded on 13.03.2012 while the D.P.C. meeting was held on 05.09.2011. Hence, the contention of the petitioner that he could not get promotion to the post of Assistant Director on account of this special adverse entry is not acceptable. Accordingly, the relief claimed by the petitioner in sub-clause (b) of the clause 5 (r) of the petition cannot be granted.

12. Now, we will discuss the special adverse entry awarded to the petitioner on 13.03.2012 by the Director General and the appellate order dated 19.11.2012 which have been impugned by the petitioner in this claim petition.

13. Coming to the contentions of the learned counsel for the parties, the learned counsel for petitioner has contended that the causes of adverse entry were the misdeeds of one of the subordinates in his

office viz. Madan Mohan Lal Arya an Accounts Clerk or Accountant who should have solely been punished. The learned A.P.O. has contended that before awarding the said special adverse entry, a preliminary inquiry was made by the Finance and Accounts Officer of the Department based at Dehradun and on the recommendation of the said officer a detailed inquiry was made by the Senior Treasury Officer of the District Bageshwar who was assisted by the District Panchayat Raj Officer of Bageshwar. On the basis of the joint inquiry made by these two officers and after affording the petitioner an opportunity to submit his explanation, the Head of the Department has found the petitioner liable for the commitment of irregularities and on the basis of the said findings the petitioner has been awarded special adverse entry.

14. The learned counsel for the respondents further contended that a special adverse entry has been awarded after recording the satisfaction on the basis of two preliminary enquiries directed to be held by the punishing authority. Thereafter the petitioner was given two show-cause notices and thereafter the petitioner has been given special adverse entry by way of minor punishment which is provided under the Uttarakhand Government Servants (Punishment and Appeal) Rules, 2003 as amended in the year 2010. The learned A.P.O. further contended that this is not special adverse entry, but it has been awarded by way of punishment.

15. We have gone through the contents of the preliminary enquiry reports and it is revealed that both reports contain that the petitioner has committed certain irregularities during his posting at Bageshwar as District Information Officer. He has further contended that the petitioner was held guilty during the preliminary enquiry with regard to not completing entries in cash-book which is mandatory for Drawing and Disbursing Officer in service. Thereafter, a notice was issued by the then Director General on 06.06.2011 which is Annexure-7 to the claim petition. Perusal of this notice clearly reveals that copy of the inquiry reports have been sent to the petitioner. The said notice is as under:-

“श्री धीरेश चन्द्र पाण्डेय,  
जिला सूचना अधिकारी,  
पिथौरागढ़।

विषय :- जिला सूचना कार्यालय, बागेश्वर में दिनांक 18.03.2005 से दिनांक 8.2.

2008 तक रोकड़ बही (कैश बुक) न भरे जाने के सम्बन्ध में।

उपरोक्त विषयक जिलाधिकारी, बागेश्वर एवं विभागीय वित्त एवं लेखाधिकारी द्वारा कराई गई जांच रिपोर्ट के आधार पर जिला सूचना कार्यालय, बागेश्वर में दिनांक 18.03.2005 से 08.07.2008 तक कैश बुक न भरे जाने के सम्बन्ध में उक्त अवधि में वित्तीय अनियमितताएं प्रकाश में आयी है। दोनों जांच रिपोर्ट की छायाप्रति आपको इस आशय से प्रेषित की जा रही है कि जांच रिपोर्ट में उल्लेखित बिन्दुवार जांच के सम्बन्ध में अपना स्पष्टीकरण/प्रत्यावेदन पत्र प्राप्ति के 15 दिन के अन्दर उपलब्ध कराना सुनिश्चित करें। अन्यथा की स्थिति में यह मान लिया जायेगा कि आपको इस सम्बन्ध में कुछ नहीं कहना है व आपके विरुद्ध अग्रोत्तर कार्यवाही प्रस्तावित कर दी जायेगी।

संलग्नक :-

1. वरिष्ठ कोषाधिकारी, बागेश्वर की जांच रिपोर्ट (छायाप्रति)
2. वित्त एवं लेखाधिकारी की जांच रिपोर्ट (छायाप्रति)

ह0/-  
(सुबर्द्धन)  
महानिदेशक

Perusal of the above Italic portion clearly reveals that the explanation/representation has been sought parawise in the said notice within 15 days and second part of the notice clearly reveals that the then Director General further intended to proceed further action against the petitioner. The notice which has been sent to the petitioner clearly reveals that there was no intention on the part of the punishing authority to award any sort of punishment and there is no iota of fact that there is any proposal to punish him under Uttarakhand Government Servants (Punishment and Appeal) Rules, 2003. Thus, this notice itself shows that any further action is open to hold against the petitioner. The petitioner submitted his detailed reply and the detailed reply was considered by the then Director General of the Information Department/punishing authority and awarded a special adverse entry to the petitioner which is impugned in this petition. The impugned order did not disclose the entry has been awarded as punishment under Uttarakhand Government Servants (Punishment and Appeal) Rules, 2003. There is no iota of fact that the petitioner is being punished under the aforesaid rules and special entry has been given by way of punishment. The petitioner preferred an appeal/representation against the special entry to the competent

authority which has been rejected by the competent authority on 19.11.2012. The representation has been preferred against the adverse entry not as an appeal against the punishment. The concluding portion of the appeal clearly emphasizes that the representation which has been preferred against the special adverse entry under the Uttaranchal Public Servant Disposal of Adverse Entry Rules had been rejected. This further shows that the punishing as well as the appellate authority were clearly of the view that the petitioner had not been awarded any minor punishment. The Department has not recommended in its parawise comment sent to the Secretary of the Government against the representation that the said representation is not maintainable as the department has punished him under the Uttarakhand Government Servants (Punishment and Appeal) Rules, 2003, and at the same time they have assumed that representation is within the rules of Uttaranchal Adverse Entries Rules. The learned A.P.O. could not demonstrate from any record that they have taken this plea during the course of the hearing of representation before the Department. When the written statement was filed the respondents have all of a sudden taken a plea that it was not a simple adverse entry but it was a punishment. It is an after thought plea that the petitioner has been punished under Uttarakhand Government Servants (Punishment and Appeal) Rules, 2003, thus, we do not find any force in the contention of the learned A.P.O.

16. Learned A.P.O. further contended that the adverse entry as special adverse entry has been awarded after conducting due



procedure of law and the representation has been decided in accordance with law. He supported the orders passed by respondents' authorities. Before dealing with the respective submissions of the Ld. Counsel for the parties, we will first analyze the scope, purpose and object of the adverse remark. The adverse remark in the regular character roll or special entries are awarded to the employees with the intention of general assessment of work performed by them and which is used to be considered in the comparative merit when question of promotion, confirmation etc. arises. The annual confidential remark or special remark shows the merit and demerit of the employee. The question of giving an opportunity to a Government servant before awarding the special adverse entry does not arise because it is based on the record which is available in the office. The rules do not provide for that an opportunity should be given to the employees before awarding any special entry/entries. It is obligatory on behalf of the State to communicate the said adverse remark/special adverse remark to the employee so that he can make a proper representation and he can seek his redressal before the Court. Thus, the safeguard has been provided to the employees after awarding a special entry. The guidelines which were referred by the Ld. A.P.O. while granting adverse remark, there is no need to give him the show cause notice but in this case the petitioner was given a show cause notice and thereafter he submitted his reply/explanation and thereafter this entry was awarded. It is not true if show cause notice has been given to the petitioner, it will amount to a punishment. The respondents have erred on the right side before awarding adverse entry, by giving a show cause notice in addition to the rules and as such they did not violate

any principle of law. It is well settled principle of law that this Tribunal while deciding the claim petition against the adverse entry, cannot look into the merits of the case and cannot re-appreciate the subjective satisfaction of the competent authority awarding the adverse entry. This Court while assessing the angle of the adverse entry on the side of judicial review, is only competent to see the manner and mode of awarding the special adverse entry. While making the judicial review of the special adverse entry, it is the settled position of law that the Court first see whether the entry has been communicated to the concerned officer/official or not or whether the adverse report is tinted with malafide and biased exercise of power by the competent authority. Judicial review of the adverse entry can also be made if the person, who had awarded the adverse entry, was not competent to award such entry to the officer/official and the said entry violates the principle of natural justice and statutory provisions of law.

17. It is well settled proposition of law that the Court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The Court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been

passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The Court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. [Vide *Tata Cellular v. Union of India*, *People's Union for Civil Liberties v. Union of India* and *State (NCT of Delhi) v. Sanjeev*.]

18. The Hon'ble Apex Court in the case of *S.R. Tewari Vs. Union of India* and another (2013) 2 SCC (L & S) 893 has held that the "Court must keep in mind that that judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. Thus, the court is devoid of the power to reappreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the court cannot arrive on its own independent finding. (Vide *High Court of Judicature of Bombay v. Udaysingh* 12, *State of A.P. v. Mohd. Nasrullah Khan* 13 and *Union of India v. Manab Kumar Guha* 14.) In the light of above settled principles we will have to examine this case."

19. Going through the records relating to the special adverse entry it comes out that during the tenure of the petitioner as District Information Officer in Bageshwar the cash-book accounts of the

office were not maintained up-to-date for a period of 3 years from March 2005 to July 2008. Seeing the gravity of the matter the Head of the Department issued instructions to his Finance Officer in June 2010 to hold a preliminary inquiry. The Finance Officer submitted his inquiry report to the Head of the Department in December 2010 in which he recommended that a detailed inquiry should be held in the matter as the allegations against the petitioner were prima facie found true vide Annexure-2 to the claim petition. Then the Head of the Department issued a letter to the District Magistrate of Bageshwar to hold a detailed inquiry through a senior officer of the district. Subsequently the District Magistrate issued instructions to the Senior Treasury Officer on 18.01.2011 to conduct a detailed inquiry and he was to be assisted by the District Panchayat Raj Officer. The Senior Treasury Officer & D.P.R.O. conducted the inquiry in which the petitioner was also given opportunity to put his defence. The inquiry was held in the presence of the petitioner.

20. The Senior Treasury Officer & D.P.R.O. submitted his report on 31.03.2011 which was forwarded to the Head of the Department on 18.04.2011. Some of the allegations were found proved in the report of the Senior Treasury Officer, hence it was decided by the Head of the Department to seek explanation of the petitioner and a show-cause notice was issued to the petitioner on 06.06.2011 which was replied by the petitioner on 22.06.2011. On the basis of the report of the Senior Treasury Officer, it was also observed by the department that there were many deficiencies in the working of the office of the

petitioner which were to be completed for proper upkeep of the records of the department in the office of the petitioner. Hence, the Head of the Department, issued instructions on 13.10.2011, again on 13.02.2012. Responding to the said instructions the petitioner sent his reply on 22.02.2012 in which he has himself admitted some financial irregularities due to which he has been censured through special adverse entry.

21. The petitioner has submitted a representation to the Appellate Authority against the impugned order of adverse entry on 13.04.2012. The appellate authority has called for the comments from the punishing authority and also summoned the records of the matter. After considering the facts of the case, the representation of the petitioner has been rejected on 19.11.2012.

22. Considering the averments made by the parties in their pleadings and the contentions made by them during the hearing and after perusing the records, it reveals that there were some irregularities and deficiencies in the functioning of the office of the petitioner from year 2005 to 2008. The Department conducted a preliminary inquiry and a detailed inquiry and after the inquiry the petitioner was issued a show-cause notice, the petitioner replied to the show-cause notice. The department further issued directions to the petitioner to remove the deficiencies in the records of the office of the petitioner and submit his compliance. The petitioner submitted his compliance on 22<sup>nd</sup> February, 2012 in which he has admitted some of the allegations.

Based on the reports of the inquiry officers and these admissions the petitioner has been censured through a special adverse entry. The petitioner has submitted a representation to the Higher Authority (Secretary of the Department) which has been decided by the higher authority after perusal of the records of the inquiry and the higher authority has also discussed in detail the findings of the special adverse entry on the basis of which the minor punishment has been awarded. After examining the records of the punishing authority, the Higher Authority has rejected the representation of the petitioner.

23. We have already discussed the settled proposition of law and we have also discussed the factual matrix of the case. The special entry has been awarded by the competent authority and it is based on two enquiries conducted by different officers of the different departments. The learned counsel for the petitioner could not demonstrate any perversity in the said factual matrix of the case. The only contention the petitioner has raised that the main fault lies with the Assistant Accountant who did not put things before him properly. Whereas the factual matrix of the case is concerned, the Tribunal cannot enter into arena of reappraisal of the evidence taken into consideration by the competent authority as we have noted above. We do not find any perversity either in recording the adverse entry and disposing of representation by the higher authority with regard to the factual matrix of the case within the scope of judicial review.

24. Now, the Hon'ble Supreme Court in the S.P. Tiwari case (supra) and in catena of the decisions has held that the Court has a power to see whether the administrative authorities has adhered the procedure for taking the administrative decisions. If the manner and conduct of any action has not been done in accordance with law and the said order is liable to be quashed under the scope of the judicial review. Now, we would like to discuss the manner in which the special adverse entry has to be dealt with. Uttarakhand Government has framed the Uttarakhand Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 (hereinafter referred to as "Adverse Rules 2002")

Rule 4 provides as under:-

- “(1) Where a report in respect of a Government Servant is adverse or critical, wholly or in part, hereinafter referred to as adverse report, the whole of the report shall be communicated in writing to the Government Servant concerned by the accepting authority or by an officer not below the rank of reporting authority nominated in this behalf by the accepting authority, within a period of 90 days from the date of recording the report and a certificate to this effect recorded in the report.
- (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:

Provided that if the competent authority or the accepting authority, as the case may be, is satisfied that the Government Servant concerned had sufficient cause for not submitting the representation within the said period, he may allow a further period of 45 days for submission of such representation.

- (3) The competent authority or accepting authority as the case may be, shall, within a period not exceeding one week from the date of receipt of the representation under sub-rule (2), transmit the representation to the appropriate authority, who has recorded the adverse report, for his comments, who shall, within a period not exceeding 45 days from the date of receipt of the representation furnish his comments to the competent authority or the accepting authority as the case may be :

Provided that no such comments shall be required if the appropriate authority has ceased to be in, or has retired from, the service or is under suspension before sending his comments.

- (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 higher authority, who shall pass such orders as he considers proper for ensuring disposal of the representation within the specified period.

Thus, the specific procedure for disposal of the representation to Higher Authority and effect thereto have been given in the above rules. According to the factual matrix of the case, the petitioner was awarded the adverse entry on 13.3.2012 and the same was communicated to him on the same date. However, it was received by the petitioner on 19.3.2012 which is revealed from the representation dated 13.4.2012. The petitioner has sent a representation directly to the higher authority namely Secretary of the Department and copy thereof is endorsed to the Head of the department, who awarded to him special adverse entry which was received to him on 19.4.2012. There was not need to send this communication of the petitioner to the higher authority as the original representation has been made to the Secretary of the Department and no request has ever been made by the petitioner on the endorsement to forward the same to Secretary who was the next higher authority.

25. After the communication of the entry the representation was to be made by the petitioner in accordance with Rule 4 (1) within 45 days from the date of communication of the entry. Thus, we find that the petitioner has made the said representation within 45 days. As such there is no violation on the part of the petitioner. Now the next question remains if the H.O.D. receives the representation he should forward his comment within 45 days from the date of the receipt of the representation alongwith his comments to the higher authority. The H.O.D. also sent his comments on 2.6.2012 within 45 days from the date of representation made by the petitioner. Rule 4 (3) as extracted above has been complied with by the Director General who has awarded the special adverse entry to the petitioner. Thereafter the said comments had to be considered alongwith representation of the petitioner by the Secretary of the department. The perusal of record reveals that the comments were received from the Director General on 2.6.2012. It is revealed from the original record that the higher authority the Secretary of the department decided this representation on 19.11.2012. Thus, it is apparent that the representation was decided beyond 120 days. The Secretary of the Government/Higher Authority should have decided the said representation on or before 30.9.2012. It is apparent that sub-rule 3 of Rule has been violated in this case.

26. The Rule 5 of the disposal of the Adverse Entry Rules 2002 reads as follows:-

“5. Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Hand-Book, Volume-II, Parts-II to IV, where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned.”

27. There may be doubts whether these rules are applicable to the said special entries awarded during the year apart from the annual entries. Rules' heading also indicates that these rules are applicable not only on the annual adverse reports but these rules are applicable to the allied matters as well. It is also provided in rule (2) that these rules have overriding effect over anything contrary contained in any other rules or orders, hence we have no hesitation to conclude that these rules are also applicable in the present case. Accordingly, the special adverse entry awarded to the petitioner is liable to be quashed.

28. The petitioner has now retired from service on superannuation. As per the discussions made above, the prayer of the petitioner for being considered for promotion is not acceptable as held above. However, the special adverse entry awarded to the petitioner is liable to be quashed in terms of Rule 5 of the Disposal of Adverse Entry Rules 2002.

29. In view of the above, the claim petition is disposed of accordingly. No orders to as costs.

Sd/-

**Justice J.C.S. Rawat**  
Chairman

Sd/-

**U. D. Chaube**  
Member (A)

B.K.

Date : 30<sup>th</sup> July, 2015

Nainital