

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

CONTEMPT PETITION NO. C-04 /SB/2024

*(Arising out of judgment dated 14.08.2023,
passed in Claim petition No.114/DB/2023)*

Dr. Jagdish Chandra Bahuguna.

.....Petitioner/applicant

vs.

Sri R.K. Sudhanshu, I.A.S., Principal Secretary, Urban Development, Govt. of
Uttarakhand, Secretariat, Subhash Road, Dehradun and others.

.....Respondents/O.Ps.

Present: Sri Uttam Singh, Advocate, for the petitioner/ applicant.(online)
Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: APRIL 16, 2024

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed by the petitioner/applicant against the respondents/ Opposite parties for initiating contempt action against them for committing willful and deliberate contempt of the judgment and order passed by this Tribunal in Claim Petition No. 114/DB/2023, Dr. Jagdish Chandra Bahuguna vs. State of Uttarakhand and others on 14.08.2023.

2. The contempt petition is supported by the affidavit of Dr. Jagdish Chandra Bahuguna, petitioner/applicant.

3. Rule 50 of the Uttar Pradesh Public Services (Tribunal) Rules, 1992, reads as below:

“50. Initiation of proceedings.—(1) Any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman.

(2) The Chairman or the Vice-Chairman or such other Members as may be designated by him of this purpose, shall determine the expediency or propriety of taking action under the Contempt Act.”

[Emphasis supplied]

4. Before proceeding further, it will be apposite to reproduce relevant paragraphs of decision rendered by the Tribunal on 14.08.2023, herein below for convenience:

“3. Representation of the petitioner was thereafter decided by Sri Navneet Pandey, Additional Secretary, Urban Development, Govt. of Uttarakhand *vide* Office Memorandum dated 18.05.2023 (Annexure: A-1).

4. In para 8 of O.M. dated 18.05.2023, it has been mentioned that Dr. Jagdish Chandra Bahuguna (petitioner) has prayed for 1st and 2nd ACP. The Addl. Secretary, in his O.M. dated 18.05.2023, has mentioned (in Para 8) that the Govt. Order dated 09.09.2011, followed by Govt. Orders dated 01.07.2013 and 12.11.2013, provide for A.C.P. to the officers/ employees of Local Bodies.

5. In para 9 of such O.M., there is mention of G.O. dated 18.01.2023, according to which A.C.R. of 05 years shall be seen while considering financial upgradation of an employee.. The Addl. Secretary to the Govt. wanted to peruse the A.C.Rs. of the petitioner, but these A.C.Rs. were not supplied by the Municipal Commissioner, Nagar Nigam, Dehradun. In para 9 of the O.M., it has also been indicated that a request was made to Municipal Commissioner, Dehradun to send Annual Character Roll and a certificate that no departmental proceeding is/ was pending against the petitioner, but such information was not sent by the Nagar Nigam/Municipal Corporation to the Govt. in Urban Development Department. The O.M. dated 18.05.2023 was concluded in a positive note that no sooner such information is sent by the Municipal Corporation to the Govt., a decision on admissibility of A.C.P. to the petitioner shall be considered.

6. The claim petition is disposed of, with the consent of the petitioner and Ld. A.P.O., by directing the Municipal Commissioner, Municipal Corporation (Nagar Nigam) to provide required information, as desired by the Addl. Secretary to the Govt. in O.M. dated 18.05.2023, within four weeks, on presentation of certified copy of this order.

7. When the requisite information is sent by the Nagar Nigam to the Govt., the competent authority in the Govt. is requested to take decision on admissibility of 1st and 2nd A.C.P. to the petitioner, without unreasonable delay,

preferably within eight weeks, on receipt of such information (from the Nagar Nigam).”

5. Ld. Counsel for the petitioner/applicant drew attention of the Tribunal towards paragraphs 10,11 & 12 of the contempt petition, which paragraphs read as under:

“10. That there is inordinate delay in granting ACP Benefit to the applicant. The petitioner has sought information under RTI Act about knowing the cause of delay. The respondent vide letter dated 13-2-2024 informed that the petitioner has to submit the Self Appraisal report/Character entries in prescribed proforma from the then serving Officers, The petitioner does not know where these officers live? whether they are alive or dead. Asking such information is absurd on the part of the respondent.

Copy of the letter dated 13-2-2024 is annexed herewith as Annexure No A-4.

11. That the petitioner wish to submit that the respondent vide order dated 28/2/2017 has brought the petitioner in the Uttar Pradesh Palika Centralized Service Rules, 1966 from 29-8-2001 i.e. retrospectively and by granting pay scale of Rs 15600-39100 Grade Pay Rs 5400/- (Medical officer Grade-II).

12. That the respondent is deliberately not granting ACP to the petitioner on the premise of non-producing Self Appraisal Report, character entries for the relevant period. In fact the petitioner had physically served as Medical Officer Group-III (non-Centralized service) for the whole service span. In State of Uttarakhand, in Group-III and IV post, no Self Appraisal report are submitted by these category of employees. The respondent vide order dated 28-2-2017 has granted Pay scale of Medical Officer Grade-II (non functional basis) retrospectively from 29-8-2001 on the basis of service rendered in Medical officer Grade- III (functional basis) after consideration of the records. The petitioner retired from the service on 31.3.2017 on attaining the age of superannuation. Due to continuous serving as Medical officer (Grade-III) till the date of retirement, there was no requirement on the part of the petitioner to submit the Self Appraisal report/ Annual confidential report etc. to the respondent. The respondent during the service span has never given any letter to submit self appraisal/ACR as being now asked. Further calling Self appraisal report/Annual confidential report etc. from petitioner for the relevant period is purely a absurd direction, a dilatory tactics of the respondent to defy the order of the Hon'ble Tribunal. In addition, the action of the respondent is against the settled principle of approbate and reprobate. The respondent at one stand has

considered & approved granting pay scale of Medical Officer (Grade-II) (non-functional) on the basis of the existing service record and the respondent subsequently disapproving the same record for granting the ACP which is not permitted in the law.

In addition to above, as per para-3 the GO No. 17-12/Karmik- 2/2003 dated 18-12-2003, Annual Confidential Report shall be written by the next authority (reporting authority) and accepted by the accepting authority: Non availability of the ACR/self appraisal report, due to the failure of the respondent himself, the petitioner can not be deprived the benefit of the ACP.

13. The order was passed on 14-8-2023 and 7 months has elapsed but it was not complied by the respondent, deliberately, malafidely which is manifest Contempt of Court."

6. Ld. Counsel for the petitioner/applicant also drew attention of the Tribunal towards noting of the Accounts Clerk, Health Section, Municipal Corporation, Dehradun, addressed to Deemed Public Information Officer/ Chief City Health Officer, which he obtained under R.T.I.

7. It appears that the Government in the Urban Development Department sought five years' A.C.Rs. of the petitioner prior to his retirement. The same could not be supplied to the authority concerned. **The reason for not supplying such information is attributed to the fact that the petitioner did not supply self-assessment report/ A.C.Rs., duly signed by the officers in the prescribed proforma** (therefore, it is not possible to supply the requisite information). It is the submission of Ld. Counsel for the petitioner/applicant that A.C.Rs. are given by the higher authorities. If the petitioner has not submitted self-assessment (for the sake of argument), his A.C.Rs. should have been recorded by the reporting authority, reviewing authority and accepting authority, as the case may be. For obtaining copies of A.C.Rs., it is not the responsibility of the official, who is seeking such information under R.T.I., to provide copies of the same.

8. The Tribunal agrees with the submission of Ld. Counsel for the petitioner/applicant that it is not the responsibility of an official to provide copy of A.C.R. and only then the information under R.T.I. shall be given about such A.C.R. by the authorities concerned. Further, copy of A.C.R. of an official could be given only when copy of such A.C.R. is supplied to him under the

Uttarakhand Government Servants (Disposal of Representation against Adverse, Fair/Satisfactory, Good, Very Good, Excellent Annual Confidential Reports and Allied Matters) Rules, 2015 (for short, Rules of 2015).

9. Moreover, even if such entry has been communicated to an official, he is not bound to supply such copies of A.C.Rs. to obtain information under R.T.I. Records are always maintained by the Establishment Section of the department concerned. If no A.C.R. has been recorded, the department concerned should have replied that the A.C.Rs. of the official for those financial years have not been recorded. Presumption, according to the Rules of 2015, would be that nothing adverse will be treated against the employee for those financial years. The Municipal Corporation, Dehradun, in the circumstances, should have written to the Additional Secretary to the Govt., that no such information is available, so, nothing adverse could be read against the petitioner as per Rules of 2015.

10. Ld. A.P.O. drew attention towards G.O. No. 1712 dated 18.12.2003 (copy supplied and kept on record) to submit that if no A.C.R. has been recorded for a particular financial year, that should be treated as 'blank' and gradation of the official should be done by the selection committee on the basis of entries of previous years.

11. In such a circumstance, Municipal Corporation, Dehradun, is directed to provide the information, which is available in their office to the Additional Secretary to the Govt., within four weeks of presentation of certified copy of this order, failure of which may attract appropriate action under the law governing the field. The Addl. Secretary to the Govt./ Competent Authority in the Govt. is requested to take decision on admissibility of 1st and 2nd ACP to the petitioner, without unreasonable delay, preferably within four weeks of receipt of such information (from the Municipal Corporation, Dehradun).

12. The Tribunal agrees with the submission of Ld. A.P.O., who is assisting the Tribunal, that it will not be proper and expedient to take action against the respondents/ opposite parties under the Contempt of Court Act 1971, in the aforesaid circumstances.

13. The Tribunal, therefore, does not feel it proper and expedient to initiate action against the respondents/ opposite parties under the Contempt of Court Act, 1971, at present.

14. The contempt petition thus stands disposed of, at the admission stage, with the consent of Ld. Counsel for the parties. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 16, 2024
DEHRADUN

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