

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

CLAIM PETITION NO. 69/SB/2024

Smt. Babita, aged about 46 years, w/o Sri Ravindra, r/o 34/2, Pooled House, Pauri, District- Pauri Garhwal.

.....Petitioner

vs.

1. The State of Uttarakhand through Secretary, Minor Irrigation Department, Uttarakhand, Dehradun.
2. Engineer-in-Chief and Head of Department, Minor Irrigation Department, Uttarakhand, Dehradun.
3. Superintending Engineer, Minor Irrigation, Division Pauri Garhwal, District- Pauri Garhwal.

.....Respondents

Present: Sri Abhishek Chamoli, Advocate, for the petitioner.

Sri V.P. Devrani, A.P.O. for State Respondent.

JUDGMENT

DATED: JULY 30, 2024

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks the following reliefs:

"I. To quash the Impugned Order dated 03.05.2024 passed by Respondent No 2 along with order dated 29.09.2022 and order dated 02.12.2022 passed by the Respondent No 3 by which the Adverse Entry was awarded by the Respondents in ACR of the Claimant for year 2021-2022 and thereafter Representation of the Claimant was rejected respectively, in an arbitrary and stereotypical manner against the prevailing service rules, keeping in view facts highlighted in the body of the Petition and after calling entire record from the Respondents.

II. To direct the Respondents to consider the name of the Petitioner in the DPC to be conducted for the promotion to the post of next higher post i.e. Chief Administrative Officer.

III. Issue any other direction or order as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case;

IV. Award costs of the writ petition to the Claimant."

[Emphasis supplied]

2. The claim petition is supported by the affidavit of petitioner. Relevant documents have been filed along with the claim petition.

3. Petitioner is Senior Administrative Officer (SAO), working in the office of Engineer-in-Chief and HOD, Minor Irrigation, Uttarakhand (Respondent No.2). She was given adverse entry for the year 2021-22 by the Superintending Engineer, Minor Irrigation, Division Pauri (Respondent No.3) vide order dated 23.09.2022 (Annexure: A 3). She filed representation to the selfsame authority, who rejected her representation vide order dated 02.12.2022 (Annexure: A 2). She gave a representation to Respondent No. 2 against order dated 02.12.2022, who

vide office order dated 03.05.2024 (Annexure: A 1) disposed of the representation by not interfering in the adverse entry of the petitioner.

4. It is the submission of Ld. Counsel for the petitioner that when the petitioner moved representation against her adverse entry to Respondent No.3, he ought to have forwarded such representation to Respondent No.2, instead of deciding the same himself. Respondent No.3 has committed an error by deciding her representation *vide* order dated 02.12.2022 himself.

5. Ld. Counsel for the petitioner further submitted that even the Office Order issued by Respondent No.2 is not a speaking order, no reasons have been assigned as to why Respondent No.2 is inclined to reject petitioner's representation.

6. Mode of communication of adverse report and procedure for disposal of representation has been given in Rule 3 (1) to 3(8) of the Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports And Allied Matters) Rules, 2002, which were amended in 2015 (for short, Rules of 2002). The said provisions read as under:

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

(6) An order passed under sub-rule (4) shall be communicated in writing to the Government Servant concerned.

(7) Where an order expunging the adverse report is passed under sub-rule (4), the competent authority or the accepting authority, as the case may be, shall omit the report so expunged.

(8) The order passed under sub-rule (4) shall be final.”

[Emphasis supplied]

7. There is violation of above noted provisions, namely Rule 3(2), Rule 3(3) and Rule 3(4) of the Rules of 2002, as have been highlighted above.

8. When the facts are clear and undisputed, it will be of no use keeping the claim petition pending. It may be decided on law point only.

9. Proper course, in the instant claim petition, should be to direct the Respondent No.2 to decide the representation of the petitioner by following the above noted procedure and by passing a speaking order

either by rejecting the representation or expunging the adverse report wholly or partly, as he considers proper, as per law.

10. The claim petition is disposed of, at the admission stage, with the consent of Ld. Counsel for the parties, by setting aside impugned order dated 02.12.2022 (Annexure: A 2) along with order dated 03.05.2024 (Annexure: A 1) and directing Respondent No.2 to decide the representation of the petitioner by following due procedure and by passing a speaking order either by rejecting the representation or expunging the adverse report wholly or partly, as he considers proper, as per law. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 30, 2024.
DEHRADUN

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