

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 69/NB/DB/2023

Amar Jeet Singh, aged about 62 years, s/o Late Sri Datar Singh, presently posted as Assistant Agriculture Officer Grade-II, in the office of the Agriculture and Soil Conservation Officer (Tarikhet) Ranikhet, District Almora, r/o Ramghat Road, New Ambedkar Nagar Qurarsi, Koli, Aligarh, Uttar Pradesh.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Agriculture, Uttarakhand, Dehradun.
2. Director, Agriculture, Uttarakhand, Dehradun.
3. Joint Director, Agriculture, Kumon Mandal, Haldwani, District Nainital.
4. Agriculture and Soil Conservation Officer, Almora, District Almora.

.....Respondents

Present: Sri A.M.Saklani, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: OCTOBER 04, 2024

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

1. *To quash and set aside the impugned order dated 05.04.2023 passed by respondent no. 2.*
2. *To issue, a suitable order or direction to the respondents to give the Illrd Promotional Pay Scale, carrying a Grade Pay of Rs.54, 00/- on completion of 26 years of service i.e. w.e.f. 12.06.2012 with arrears to the petitioner.*
3. *To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under*

the circumstances of the facts and circumstances of the case.

4. To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.

2. This is a second round of litigation between the parties. Earlier, the petitioner filed Claim Petition No. 28/NB/SB/2021, which was decided by the Tribunal vide order dated 21.12.2022. Instead of narrating the facts of the petition again, it is better if the operative portion and relevant facts, as narrated in the decision dated 21.12.2022, are reproduced herein below for convenience:

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

2. Brief facts, according to the claim petition are that the petitioner was initially appointed as Assistant Agriculture Officer Grade III by virtue of an order of appointment dated 12.06.1986 by due process of law. He was promoted on the post of Assistant Agriculture Officer Grade II vide order dated 03.06.1995 and on the basis of recommendation of departmental screening committee, the petitioner was granted II promotional pay scale carrying grade pay of Rs. 4200/- after completion of 16 years service, at present the petitioner is getting grade pay of Rs. 4600/-. As per the notification dated 08.07.2009, the employees, who have not been awarded an adverse entry just 2 years prior to consideration, shall be declared eligible for promotion. The State Government had laid down the parameters and norms for the grant of ACP benefits and as a consequence thereto explanation on certain points has been issued vide letter/order dated 09.03.2019, according to which for the purpose of financial rating if annual entry in any year of 10 years service is below to standard, that year will not be counted for eligibility. The departmental proceeding was initiated against the petitioner, the allegations against him were that he has committed financial irregularities in the year 2010-11. In enquiry the petitioner found not guilty but the disciplinary authorities passed order by which the recovery of Rs. 2,42,205/- has been issued against the petitioner and after admonition the disciplinary proceeding come to an end, against which the petitions filed by the petitioner before Hon'ble Tribunal.

3. It is submitted here that all those annual confidential entries recorded by the respondent was uncommunicated entries except the entry recorded in the year 2011, except the entry recorded in the year

2011, all entries are 'good' and very good the copy of which was received by the petitioner under Right To Information Act.

4. It is relevant to mention here that one Brijbushan Assistant Agriculture Officer Grade II, Chunnilal Assistant Agriculture Officer Grade II and Veer Sain Assistant Agriculture Officer Grade II were also awarded Adverse entry for the year 2010-11 and departmental proceeding also initiated against them, but they have granted II and III promotional pay scale before the disposal of department enquiry.

5. The petitioner made a several representations to the respondent for granting him IIIrd promotional pay scale carrying grade pay of Rs. 5400/- after completion of 26 years of services with effect from 12.06.2012, but the petitioner was denied the benefit of IIIrd promotional pay scale on the ground of adverse entry against the petitioner in the year 2011.

6. The act of the respondent is discriminatory and arbitrary in nature, the petitioner was awarded "good" and very 'good' entry in A.C.R., all the entries except entry 2011 were awarded 'good' and very good, therefore the petitioner is entitled to get the IIIrd promotional pay scale carrying grade pay of Rs. 5400/- after completion of 26 years service.

7. The petitioner should be given similar treatment as given by the respondent in the case of Brijbushan, Chunnilal & Veer Sain. The entries in A.C.R. has not been communicated to the petitioner except entry in the year 2011.

8. It has provided that the Annual Confidential Entries are mandatorily required to be communicated to an employee against whom the entries are made in order to enable the employee to get his grievance redressed against the adverse entries by filing the representation, which is statutory in nature in accordance with the Rules, which are framed under the proviso to Article 309 of the Constitution of India, namely "The Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2015. Where the communications are not made to the adverse entries made, against an employee in his service records, it cannot be read against him.

9. It is further stated that if the entries as made in the ACRS, are not communicated, they cannot be read against the delinquent employee and would not create any impediment in grant of service benefits, as soon as the petitioner learnt about the recording of adverse entries against him, he has represented his case by filing a

representation, praying for that those entries ought not to be attracted and be read for the purposes for denying the benefit of third ACP. It has been stated that as per Rule 5 of the said Rules of 2015, which reads as under:-

“5. Report not to be treated adverse- 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.”

10. It has further been stated that as per Rule 56 of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook Parts II to IV, any un-communicated adverse entry will not be read as adverse entry against an employee to deny a service benefit, same cannot be read against the petitioner for the purposes of denying the benefit of third ACP.

11. The petitioner also relied upon the decisions rendered by the Hon'ble Supreme Court in Dev Dutt Vs Union of India and others, as reported in AIR 2008 SC 2513, Sukhdev Singh Vs. Union of India and others, as reported in AIR 2013 SC 2741.18 and Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and others, reported in AIR 2015 SC 3057. Hence, the petitioner is entitled to get the benefit of IIIrd promotional pay scale w.e.f. 12.06.2012.

12. Counter Affidavit has been filed on behalf of respondents mainly stating that the A.C.R. of the petitioner for year 2010-11 has been recorded unsatisfactory and the integrity is doubtful and the petitioner has not given any representation for deletion of such entry to the competent authority, therefore, the entry is effective for said period. *Vide* Notification dated 9th January 2013 of the Govt. of Uttarakhand, in exercise of powers under *proviso* to Article 309 of the Constitution of India, the State Government framed the Rules known as “Uttarakhand (Outside the purview of Public Service Commission) Procedure for Selection for promotion in Govt. Services Rules, 2013.” Rule 3(4) provides that any one of the ACR Entry of the last 05 years, otherwise the integrity of any personnel is doubtful; such personnel will not be considered suitable for promotion. Therefore, the petitioner, Sri Amar Jeet Singh was not declared suitable for the IIIrd financial upgradation Grade pay of Rs. 5400/- on 12.06.2022. The petitioner was suspended by the Agriculture Directorate vide order dated 22.02.2022. In the year 2011-12 and 2012-13 (from 22.01.2012

to 09.09.2013), the disciplinary proceedings against him remained in force as per order no.6033 dated 09.09.2013. The petitioner was imposed recovery of Rs. 242205/-, which pending till date. The entries after the year 2013-14, are good. As per G.O. dated 09.03.2019, if the annual entry of any one year out of 10 years of qualifying service is less than the standard, the that year will not be included in calculation for eligibility. The petitioner, being employee of Matrix level-7, the due entries are less that the standard for admissibility of financial upgradation, therefore, was not considered eligible. The petitioner has not deposited the recovery amount of Rs. 242205/- inspite of the orders.

13. The Government of Uttarakhand *vide* notification dated 28.04.2015 issued "Uttarakhand Government Servants (Disposal of Representation and Allied matters against the Adverse, Good, Satisfactory, Very Good, Outstanding, ACR entries) Rules, 2015 (hereinafter referred to as the 'Rules of 2015'). These rules came into effect on 28-04-2015. Hence the petitioner cannot claim to be considered due to non-communication of ACR entries. Before 28.04.2015 there was no notification regarding the communication of good/satisfactory, very good, outstanding ACR entries. The petitioner is asking to upgrade the ACR of year 2010-11 due to non-communication of ACR but the Rules of 2015 came into force on 28.04.2015. Before the Rules of 2015, there was no system of communication of Good/Satisfactory, Very Good, Outstanding ACR entries. The petitioner's ACR entries belong to the years 2010-11 and 2011-12, when there was no rule for making representation against the Good/ Satisfactory, Very Good, Outstanding ACR entries. The Rules of 2015 are not applicable in year 2010-11 and 2011-12. Hence, the petitioner is not entitled to receive any benefit of these rules.

14. Rejoinder affidavit has been filed by the petitioner denying the contents of the Counter affidavit and reiterated the averments made in the claim petition. It has been stated that the adverse entries were never communicated to the petitioner, hence in accordance with the rules, as well as in accordance with the judicial precedence, the un-communicated entries can never be read against the petitioner in considering his claim for grant of promotional pay scale. It has further been stated that petitioner has not been given an opportunity of hearing to file representation against the entries recorded against the petitioner in ACR. The petitioner cannot be ignored by taking into consideration un-communicated Annual Confidential Reports for the

reporting year, remaining entries of the petitioner being very good, he is entitled to be considered fit for promotion.

15. Learned Counsel for the petitioner has prayed for the desired relief in view of the judgments rendered by Hon'ble Apex Court in of Dev Dutt vs. Union of India (*supra*) and Sukhdev Singh vs. Union of India & ors (*supra*). Learned A.P.O., on the other hand, submitted that the Rules of 2015 were framed only in 2015, and were notified on 28.04.2015. Therefore, there was no requirement of communicating all the entries of the ACR to the petitioner.

16 The observations of Hon'ble Apex Court in Dev Dutt vs. Union of India (*supra*) in paras 47 and 48 of the decision assume significance. These observations are reproduced herein below for convenience:

"47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993- 94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment."

[Emphasis supplied]

17. The observations of the Hon'ble Apex Court in Sukhdev Singh vs. Union of India (*supra*), are also important and are reproduced herein below for convenience:

"8. In our opinion, the view taken in Dev Dutt 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.

10. Insofar as the present case is concerned, we are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

[Emphasis supplied]

18. The case laws cited in Dev Dutt (*Supra*) and Sukhdev Singh (*supra*), lay down the requirement of communication of entries to the employees so that they can make timely requests for upgradation of the same and if the employee is deprived of such opportunity, such entries though, they may not be adverse as such, but being of lower grade can affect the service prospects of the employee.

19. Rule 4 of Rules of 2015 provides that any entry in totality, whether it is 'Adverse', 'Satisfactory', 'Good', 'Very Good', 'Outstanding' shall be communicated to the concerned officer/employee, within 60 days after the entry is given. The employee against whom adverse, satisfactory, good, very good entry has been recorded is entitled to make a representation to the authority one rank above to the Accepting Authority within 45 days from the date of communication of the entry. The competent authority after receiving the representation of the employee shall send it within 7 days, for the comments/reports to the authority which wrote these remarks. This remark giving authority, should send his comments/reports to the Accepting Authority within 45 days after receiving the representation. Subsequently, within 120 days, the Competent Authority shall consider the representation of the employee and comments/reports of remark making authority, and shall either (1) reject the representation or (2) expunge the adverse report wholly or partially or (3) upgrade the satisfactory, good, and very good entry with a reasoned and speaking order. Such order passed shall be communicated to the government servant. Rule 5 of Rules of 2015 provides that where the representation has not been decided as per Rule 4 then such adverse entry should not be treated as adverse for the purpose of promotion or other service benefits of the employee.

20. After obtaining the copies of ACRs through R.T.I., the petitioner has made representations against the entries for the year 2010-11.

21. The Tribunal observes that the respondent should now consider the representations of the petitioner within a reasonable time and, if after such consideration any of the entries is upgraded, then to take action according to Rule 6 of the Rules of 2015 which reads as below:-

“6. The effect of upgradation of Fair/Satisfactory, Good, Very Good Reports-Where after considering the representation against the Fair/Satisfactory, Good, Very Good report the competent authority passes the order to upgrade such entry then, if where at the time of promotion due to such reports the concerned employee has been found ineligible or deprived from any other service benefits, then after upgradation of entries, he shall be reconsidered for promotion and other service benefits and if found eligible the notional promotion and other service benefits shall be provided from the date of the promotion of his juniors.

In respect of change of category of entry the competent authority shall pass speaking orders.”

[Emphasis supplied]

22. The Tribunal, therefore, directs the respondents to consider the representations of the petitioner against the entries of the year 2010-11 within 120 days from the date of this order and pass reasoned and speaking orders on the same and, if any of these entries is upgraded, to take further action in the next two months about granting 3rd Promotional pay scale carrying the grade pay of Rs. 5400/- from the date of his entitlement on completion of 26 years of services. Needless to say that if the respondents do not take any decision on the representations of the petitioner, such entries deserves to be ignored while considering the 3rd Promotional pay scale carrying the grade pay of Rs. 5400/- from the date of his entitlement on completion of 26 years of services.

23. With the above directions, the claim petition is disposed of.
No orders to as costs.”

3. Petitioner submitted his representation to the respondent no. 2 pursuant to the directions of the Tribunal on 10.02.2023, which was rejected by the respondent no. 2 vide impugned order dated 05.04.2023 and maintained the earlier order. According to the petitioner, the impugned order has been passed in a cursory manner, without considering the representation of the petitioner. There is no single word mentioned in the impugned order about the representation of the petitioner. It is further submitted that it was the duty of the authority to examine the representation of the petitioner, why the explanation offered by the petitioner was not acceptable by the respondents. The impugned order is not speaking and reasoned order, there is liable to be quashed and the petitioner is entitled to get

the benefit of IIIrd Promotional Pay Scale carrying the Grade Pay of Rs. 5400/- from the date of his entitlement on completion of 26 years of service.

4. The respondents by filing C.A./W.S. submitted that the petitioner has been informed about the entries for the said review period dated 17.08.2010 to 31.03.2011 sent by the Additional Director of Agriculture vide letter no. 621 dated 11.08.2011. In the said entry 2010-11, the Agriculture and Land Conservation Officer, Roorkee, Landhaura (Haridwar) has marked that "During the review period, Shri Amar Jeet Singh, Assistant Agriculture Officer, Class-2 has not properly discharged his duties and responsibilities. Even after the end of financial year 2010-11, no adjustment of four Nyay Panchayats bill has been presented. During inspection on 30/3/2011, a written statement was given by Shri Singh that no agricultural investment distribution register is ready. Departmental receipt has not been issued. The said entry was timely informed to the petitioner by the department. Being dissatisfied with the said adverse entry, the petitioner sent his representation dated 09.01.2014 to the Additional Director of Agriculture, Garhwal Division, Pauri through proper channel, a copy of which was also sent to the Agriculture and Soil Conservation Officer, Ranikhet. The Agriculture and Soil Conservation Officer, Ranikhet sent the said representation to the Chief Agriculture Officer, Almora through his letter number 883 dated 16.01.2014. The Chief Agriculture Officer, Almora sent it to the Additional Director of Agriculture, Garhwal Division, Pauri through his letter number 2108 dated 28.01.2014. The disciplinary proceedings against the irregularities committed by the petitioner were terminated by the Directorate's letter no. 462 dated 08.11.2019 with the recovery of the amount of Rs. 242205.00 and a warning for the future while reprimanding the act. No appeal/petition of any kind was filed by the petitioner in any court against the said order. Being satisfied with the said order, the petitioner deposited the said amount in the government treasury. In accordance with the provisions given in Government Order No. 479/dated 08.07.209, Government Order

No.43/09.01.2013, Government Order No. 1159/10.12.12, Government Order No. 65/dated 09.03.2019 and Government Order No. 11/dated 17.02.2017, on reviewing the character entries of the previous year before the due date 12.06.2012 of Shri Amarjit Singh, S.A. Class-2, the Screening Committee found that the character entry of the petitioner was not considered suitable for providing the benefit of third financial upgradation due to poor and doubtful category/below standard, due to which the third financial upgradation was not approved to the petitioner. The irregularities were committed by the petitioner in the department due to which the petitioner deposited the recovery of Rs. 242205/-. The petitioner is well aware that only character entries of five years are taken into consideration. In view of the above, the promotion of the petitioner has been done by order number 5455 dated 05.01.2022 of the Directorate of Agriculture. The petitioner has been paid the dues and given promotion as per the Government orders in force from time to time. The claim petition is based on fabricated and false facts which deserve to be dismissed with costs.

5. Rejoinder Affidavit has been filed on behalf of the petitioner denying the contention of the respondents and has reiterated the averments made in the claim petition.

6. We have heard learned Counsel for the parties and perused the record carefully.

7. Learned Counsel on behalf of the petitioner has pleaded that the petitioner is due for the promotion for IIIrd ACP but he has not been granted due to the non- communication of the adverse entry for the year 2010-11. The entry could be communicated to only after the judgement of the Hon'ble Tribunal on 21.12.2022. The petitioner made a representation against the adverse entry in the ACR for the year 2010-11, which the department disposed off that the adverse entry in the ACR is kept as such. The learned counsel has further pleaded that the department has given promotion under ACP to many officers despite one adverse entry in their ACRs. The entry in his

character roll for the nine years are either good or very good and the adverse entry should be overlooked due to non-communication of the entry to the petitioner he should be promoted.

8. The learned A.P.O. has pleaded that the petitioner was given the punishment of warning and censure and was asked to deposit Rs 242205/- (Two lakhs forty-two thousand two hundreds five only). He did not appeal against the decision of the disciplinary authority and accepted the decision. The committee constituted for ACP did not find him suitable for grant of IIIrd ACP due to adverse entry in the ACR for the year 2010-11.

9. On the basis of the documents submitted by the parties and their arguments, we are of the opinion that the plea of petitioner for non-communication of adverse entry with ACR after the order of the Hon'ble tribunal is not justified. The claim of the petitioner that he has been exonerated by the Disciplinary Authority is also not acceptable as per the submission of the respondents that he was ordered for recovery of Rs. 2,42,205/- and warned for future while reprimanding the act. He did not file appeal against the decision of the Disciplinary Authority and accepted the punishment for depositing amount of Rs 2,42,205/-. The Disciplinary Authority has rightly rejected his representation against the adverse entry in the ACR and he was not found fit for grant of IIIrd ACP. So, the petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(A.S.RAWAT)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATED: OCTOBER 04, 2024
DEHRADUN.
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