

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

Writ Petition No. 320 (S/B) of 2017

[Reclassified and Renumbered as Claim Petition No. 103/NB/SB/2022]

Dr. Sanjay Kumar Sah, s/o Sri N.L. Sah, presently posted as Senior Consultant Skin/ Joint Director, J.L.N. Hospital, Udham Singh Nagar.

.....Petitioner

versus

1. State of Uttarakhand through Additional Chief Secretary, (Medical), Secretariat, Dehradun.
2. Director General, Medical Health and Family Welfare, Directorate, Dehradun.
3. Additional Director Administration, Medical, Directorate, Dehradun.
4. Dr. R.P. Bhatt, the then Chief Medical Officer, Dehradun, now member Medical Selection Board and Advisor to Additional Chief Secretary (Medical), Secretariat, Dehradun.
5. Dr. Yogendra Singh Thapliyal, s/o not known, presently posted as Chief Medical Officer, Tehri Garhwal.

..... Respondents

Present: Sri Anil Anthwal, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

Dated: 08th October, 2024

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 21.09.2022 in WPSB No. 320 of 2017, Dr. Sanjay

Kumar Sah vs. State of Uttarakhand and others, which (order) reads as under:

“Mr. Dheeraj Joshi, learned counsel holding brief of Mr. Anil Anthwal, learned counsel for the petitioner.

Mr. Vikas Pande, learned Standing Counsel for the State.

Mr. K.P. Upadhyaya, learned Sr. Counsel for respondent no. 4.

The petitioner was a public servant. The reliefs sought in the writ petition are the following:-

“i) Issue a writ of certiorari to quash the decision of Departmental Promotion Committee dated 28.04.2017 so far relates to the petitioner whereby the petitioner has been declared unfit for promotion to the post of Additional Director on the basis of the uncommunicated good/satisfactory entry for the assessment year 2012-2013.

ii) Issue a writ order or direction in the nature of mandamus directing the respondents to declare the denial of promotion on the post of Additional Director to the petitioner on the basis of uncommunicated A.C.R. entries, as arbitrary and illegal.

iii) Issue a writ order or direction in the nature of mandamus directing the respondent no.1 and 2 to hold review DPC and to promote the petitioner on the post of Additional Director, Medical Health after ignoring the A.C.R. entry for the assessment year 2012-2013 which was not communicated to the petitioner till date.

iv) Issue a writ order or direction in the nature of mandamus directing the respondents to promote the petitioner to the post of Additional Director from the due date i.e. 28.04.2017 when the juniors and other counter parts were promoted.

The subject matter of the writ petition squarely falls for consideration by the Uttarakhand Public Service Tribunal.

Considering the fact that the petition has been pending since 2017, we direct the Registry to transmit the complete record of the petition to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

This writ petition stands disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 13836 /UHC/Service Section(S/B)/2022 dated 26.09.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as claim petition no. 103/NB/SB/2022.

3. Petitioner, a Medical Officer of the rank of Joint Director, was declared unfit for promotion to the next higher post on the basis of satisfactory/ good entries recorded in the ACR for the assessment year 2012-13. Promotional exercise was started on the basis of merit-cum-seniority and subject to rejection of unfit, under the Uttarakhand (Posts outside the Purview of Public Service Commission) Procedure of Selection for Promotion under Government Service Rules, 2013.

3.1 According to the petition, the entries were never communicated to the petitioner, hence, there was no occasion for him to make any representation. Petitioner is eligible to be promoted as Additional Director. Petitioner was denied promotion to the higher post. When he came to know about the promotion of other persons, who joined as Additional Director, Medical Health, petitioner moved a representation. The decision of DPC was also not communicated to him.

3.2 The petitioner relies upon the decision rendered by the Hon'ble Apex Court in Dev Dutt vs. Union of India and others, 2008 (8) SCC 725 and Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and others, 2015 (14) SCC 427. Petitioner also relies upon the Uttarakhand Government Servants (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002, which were amended in the year 2015. A copy of amended Rules of 2015 has been brought on record as Annexure No. 3 to the petition.

4. Petitioner has filed affidavit in support of his petition. Relevant documents have been filed with the petition.

5. The petition has been contested on behalf of the respondents. Ms. Garima Rounkaly, the then Joint Secretary, Department of Medical Health and Family Welfare, Govt. of Uttarakhand, has filed counter affidavit on behalf of respondents no. 1 to 3.

6.1 In para 4 of such C.A., it has been mentioned that the annual confidential report of the petitioner for the year 2012-13 was 'good' as endorsed by the Reporting Officer, which was approved by the Reviewing Officer.

6.2 In para 6 of the C.A., it has been stated that the petitioner was working as District Leprosy Officer in district Dehradun. The ACR entry of the petitioner could not be accepted by the Accepting Officer i.e. Director General, Medical Health, as no such officer was working on such post for three months or more.

7. An endeavour has been made by the respondents to defend the departmental action by stating that as per Uttarakhand (Posts outside the Purview of Public Service Commission) Procedure of Selection through Promotion in Government Service Rules, 2013, the selection would be made on the basis of merit amongst the eligible officers by evaluation and perusal of service record and ACR entries. Since the petitioner was given 'good' entry, so the officers categorized as 'very good' officers were recommended to the post of Additional Director. The petitioner has been categorized as 'good', therefore, he has not been found suitable for promotion to the post of Additional Director.

8. In this way, the respondents have relied upon the Rules of 2002, wherein it was provided that only adverse entry shall be communicated. The fact of the matter is that in Dev Dutt vs. Union of India and others, 2008 (8) SCC 725 and Prabhu Dayal Khandelwal vs. Chairman, Union Public Service Commission and others, 2015 (14) SCC 427, the Hon'ble Apex Court has directed that all the downgraded entries should be communicated to a Govt. servant. Neither the petitioner was communicated the downgraded entry nor his representation was decided within stipulated time, therefore, as per amended Rules of 2015, the same shall not be treated as adverse for the purpose of service benefit.

9. The respondent department, in this way, has tried to argue that petitioner's matter will be covered by the Rules of 2002 and not

the amended Rules of 2015. The respondent department might argue that the Rules of 2015 came in the year 2015, therefore, only adverse entries were required to be communicated to a Govt. Servant and not downgraded entries. It may be stated here that the decision rendered by the Hon'ble Apex Court in Dev Dutt (*supra*) [which was followed in Prabhu Dayal Khandelwal (*supra*)] became the law of the land in the year 2008. The rulings of Hon'ble Apex Court should have been followed (under Article 141 of the Constitution of India) despite the fact that these (rulings) were statutorily given place only in the year 2015 *vide* notification dated 28.04.2015.

10. Because downgraded entry was not communicated to the petitioner and representation against the same has not been decided within stipulated time, therefore, as per the decisions of Hon'ble Apex Court and subsequently as per the Rules of 2015, the same shall not be treated adverse for the purpose of any service benefit to the petitioner.

11. A Govt. servant has a right to be considered for promotion. Non-consideration on the basis of uncommunicated ACR entries cannot sustain. Moreover, when a Govt. servant moves a representation against his downgraded entry, the same must be considered within stipulated time frame. Further, the case of the petitioner is of uncommunicated 'good' entry for the year 2012-13 and even if it is argued that the Rules of 2015 will not be applicable to him, the fact of the matter is that decision rendered by the Hon'ble Apex Court in Dev Dutt (*supra*) [which was followed in Prabhu Dayal Khandelwal (*supra*)] came much earlier in the year 2008, which are *judgements in rem* and became law of the land, hence, binding on all concerned.

12. This is yet another aspect of the matter. It is admitted that good entries in the ACR for the assessment year 2012-13 were never endorsed by the 'Accepting Authority'. No where it has been provided that the ACR written by Reporting Authority & Reviewing Authority may be deemed to have been accepted if Accepting

Authority did not have the occasion to see the work for 03 months or more.

13. Rule 5 of the Rules of 2015 reads as under:

“Report not to be treated as adverse.

5. Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial hand book. Volume-II, Part-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.”

14. Respondents are, therefore, directed to convene a review DPC of DPC dated 28.04.2017 for considering the promotion of the petitioner for the post of Additional Director, as expeditiously as possible, in accordance with law. If the review DPC finds that the petitioner is fit to be promoted as Additional Director, then he should be given notional promotion from the date his junior was promoted.

15. Petition thus stands disposed of. No order as to costs.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 08th OCTOBER, 2024
DEHRADUN
RS