

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

Present : Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 53/NB/SB/2022

Tanuj Pant (Male), aged about 33 years, S/o Late Sri Jagdish Chandra Pant, R/o 293, Umashankar Niwas, Heeranagar, Haldwani, District Nainital
Presently working as Senior Assistant in the office of Chief Engineer (Level-2), Irrigation Department, Haldwani, District Nainital

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Irrigation, Dehradun
2. Chief Engineer, Irrigation Department Uttarakhand, Yamuna Colony, Dehradun.
3. Superintending Engineer, Irrigation Works Division, Haldwani, District Nainital
4. Executive Engineer, Irrigation Division, Haldwani, District Nainital

..... Respondents

Present : Sri Deep Chandra Joshi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents (Online)

JUDGMENT

DATED : **DECEMBER 20, 2024**

This claim petition has been filed seeking the following relief:-

- “(i). to quash the impugned order dated 18th January, 2021 whereby the representation against awarding adverse entry by the petitioner towards year 2019-20 has been dismissed and further prayed for issuance of direction to the respondent to correct the adverse entry awarded to the petitioner for the year 2019-20
- (ii). grant any other relief, order or direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.
- (iii) award the cost of the petition to the petitioner.”

2. In brief, the facts of the case are that on 08.07.2009, the petitioner was appointed as Junior Assistant in the Irrigation Department, Nainital

under the Dying-in-Harness Rules. Thereafter, in the year 2016, he was promoted on the post of Senior Assistant at Irrigation Division, Haldwani. Every year, as per rules the Department awards annual confidential entry in the service-book on the basis of conduct to every regular employee working in the Department. The work and conduct of the petitioner was always found satisfactory by his superior and there was no complaint against him and, therefore, annual confidential entry of the petitioner till year 2018 has been good. In the year 2018, Mr. Tarun Kumar, Executive Engineer, Irrigation Division, Haldwani harassed the petitioner from time to time. In the year 2019-20, the petitioner had been awarded the adverse confidential entry in his service record, due to which, the petitioner was not promoted on the post of Chief Assistant. Prior to awarding annual confidential entry to the individual a form is duly filled by each employee in his own handwriting which is submitted to the Superior Authority. The Superior Authority will sign the same and forward it to his Superior Authority. The immediate higher authority of the petitioner is Assistant Engineer and duly filled form must be signed by him and thereafter, forwarded to the Executive Engineer. As per procedure, the petitioner had submitted his duly filled form to his Superior Authority, i.e., Assistant Engineer, but the original form submitted by the petitioner was destroyed and in its place, some other form (which was not filled by the petitioner and never signed by Assistant Engineer) was prepared by the Executive Engineer, on which, adverse entry was awarded to the petitioner. After seeing the form it revealed that the form supplied to the petitioner was not submitted by him and the same was not signed by the petitioner and not endorsed by his immediate Superior Authority, i.e., Assistant Engineer.

3. The petitioner then had made a representation before the appellate authority, but the same was rejected by the appellate authority vide its order dated 18.01.2021.

4. Thereafter, the petitioner challenged the order dated 18.01.2021 passed by the respondent, before the Hon'ble High Court of Uttarakhand at Nainital, by way of filing Writ Petition No. 422 (S/S) of 2022 Tanuj Pant Vs. State of Uttarakhand & others. However, on 22.03.2022 the said writ petition was dismissed by Hon'ble High Court directing the petitioner to

seek remedy from the appropriate forum, i.e., Public Services Tribunal. Hence, this claim petition has been filed by the petitioner before the Uttarakhand Public Services Tribunal, Bench at Nainital.

5. Counter affidavit has been filed by the respondent No. 4, who is representing all the respondents. According to the counter affidavit, the petitioner had been found guilty of irresponsibility and dereliction of duty towards his official work in the years 2018-19 and 2019-20 by the senior officers wherein he was regularly and frequently warned to improve his work by the then Executive Engineer, Irrigation Division, Haldwani. But there was observed no improvement in the functioning of the petitioner, so much so that due to his inapt working his transfer to some other stations had also been recommended in 2019. Even his suspension had been recommended on 17-01-2020 by the then Executive Engineer, Irrigation Division, Haldwani. On the basis of these recommendations, the petitioner had been attached on 29.01.2020 at Nainital Division. Apparently, many such adverse observations were made by the then Executive Engineer against the petitioner and finally the petitioner was given an adverse entry for the year 2019-20 and was informed about the adverse entry on 21.09.2020.

6. According to the counter affidavit, the petitioner had preferred a departmental appeal against the aforesaid entry before the Chief Engineer, Irrigation at Haldwani. On 18.01.2021, the appeal of the petitioner was found unsatisfactory and rejected.

7. Finally, the petitioner moved Hon'ble High Court in Writ Petition No. 422 (S/S) of 2022, however, Hon'ble High Court on 22.03.2022 dismissed the writ petition directing the petitioner to seek relief at Uttarakhand Public Services Tribunal. The Counter affidavit is accompanied by a number of written warnings having been given to the petitioner by the then Executive Engineer, Irrigation Division, Haldwani from 2018 to 2020 as annexures. In these warning letters, a couple of times the petitioner's explanation had also been called for which the petitioner has failed to address to properly. Instead of giving a satisfactory explanation the petitioner simply has confessed his mistake and promised not to repeat such mistake again.

8. Learned Counsel for the petitioner has not filed any rejoinder affidavit against the counter affidavit filed on behalf of the respondents.

9. I have heard the learned Counsel for the parties and perused the records.

10. There are following five facts quite apparently noticeable in this petition are as below:-

- (A). The petitioner was appointed on 04.07.2009 in the Irrigation Department on the post of Junior Assistant under Dying-in-Harness Rules in place of his father. Until the year 2018-19 there is no record on file to show that he was not a good employee for the Irrigation Department between 2009 to 2018. So much so that he was even awarded his first promotion on 15.09.2016 and joined as Senior Assistant in the Irrigation Division, Haldwani on 01.10.2016. There again the records are silent upto the end of 2018 so far as his alleged unsatisfactory functioning is concerned.
- (B). The petitioner's down fall began abruptly at the fag end of 2018 and continued through the entire 2019 and 2020. Incidentally, during this entire period all the warning letters, the adverse entry, the transfer recommendation as well as the recommendation for petitioner's suspension have been initiated only by one Executive Engineer who was posted as petitioner's superior at that time.
- (C). In the writ petition, the petitioner has mentioned vividly about harassment being doled out to the petitioner by the above mentioned superior, i.e., the then Executive Engineer, Irrigation Division, Haldwani.
- (D). This is also noticeable that the then Superintending Engineer, Irrigation had also concurred with the recommendations of the Executive Engineer regarding the unsatisfactory conduct of the petitioner by his letter dated 22.10.2020 informing the petitioner by this letter about the adverse entry under question.
- (E) The last, but not the least, is the observation by this Court that the petitioner's representation/appeal before the Chief

Engineer, Haldwani has been decided/rejected by the same officer who had informed the petitioner regarding the adverse entry, in the capacity of the then Superintending Engineer earlier.

11. There is no doubt that as per the records available before the Court, the petitioner has perhaps never been given an adverse entry or warning etc. in the first 09 years of his service, and there is no doubt that all the adverse opinions have been made and such adverse correspondence initiated by a single supervisory officer, the then Executive Engineer, Irrigation, Haldwani; nevertheless, this does not substantiate the petitioner's claim that his superior officer began harassing the petitioner since the year 2018 onwards with mala fide intention.

12. It appears that since 2009 upto 2016 the petitioner was a Junior Assistant where his supervisory officer might not have taken cognizance of his unsatisfactory working style. However, in 2016, with his promotion on the post of Senior Assistant his work came under direct scrutiny of his superior officer, therefore, it would not be surprising that his unsatisfactory working style might have been noticed for the first time in 2018 onwards. Therefore, so far as the alleged insinuation of harassment by petitioner's superior is concerned it is to be taken with a pinch of salt. What else is expected of the supervisory officer if his Senior Assistant accountable for keeping the official records and documents updated is found repeatedly irresponsible and unsatisfactory toward his official duties? As such, the then Executive Engineer, Irrigation, Haldwani seems to be a tough task master from the records. Therefore, what the petitioner is alleging as harassment might actually be the "no nonsense working style" of the petitioner's superior. Thus, the Court is not convinced about the said insinuation.

13. Quite naturally the corollary of the above mentioned flow of events resulted in recommendation for petitioner's transfer, another recommendation for his suspension and finally an adverse entry to the petitioner. Therefore, in this petition, it cannot be said that the petitioner has been subjected to an undue harassment by his superiors.

14. Nevertheless, having observed as above, it is quite interesting to notice on the record that the appellate authority deciding/rejecting the petitioner's appeal/representation is the same officer in the capacity of Chief Engineer, who had concurred earlier as Superintending Engineer with the recommendation of the aforesaid Executive Engineer. Therefore, an element of lurking bias cannot be ruled out when the decision to reject the said representation of the petitioner was taken. When the appeal/representation was dismissed/rejected by the same officer, this benefit of doubt naturally goes in favour of the petitioner. Justice must appear to have been done judiciously.

15. The claim petition is, therefore, partly allowed. So far as the dismissal/rejection order dated 18.01.2021 of the appeal is concerned it is not maintainable and thereby quashed. A fresh and unbiased consideration on the appeal/representation as submitted afresh by the petitioner seems to be the need of the hour, by the present incumbent officer as an Appellate Authority, without getting influenced by the earlier order dated 18.01.2021 on appeal/representation. Enough time period has elapsed for cooling down the then passion and anguish, and the judicious reasoning may now prevail.

ORDER

Accordingly, the claim petition is partly allowed. The impugned order dated 18.01.2021 is hereby set-aside with a direction to the petitioner to submit his appeal/representation afresh before the appropriate Appellate Authority, who will decide the appeal/representation within a period of one month from the production of a certified copy of this judgment. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: DECEMBER 20, 2024
NAINITAL
BK