

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**CLAIM PETITION NO. 103/DB/2021**

Harish Chandra Sharma, s/o Late Sri V.P.Sharma, aged about 58 years, presently posted as Office Assistant Grade-II, EDC (Urban) Kaulagarh, FRI Campus, Dehradun.

**....Petitioner**

**VERSUS**

1. State of Uttarakhand through Secretary (Energy) Civil Secretariat, Dehradun.
2. Managing Director, Uttarakhand Power Corporation Ltd., Oorja Bhawan, Kanwali Road, Dehradun.
3. Director (Human Resource), Uttarakhand Power Corporation Ltd., Oorja Bhawan, Kanwali Road, Dehradun.
4. Superintending Engineer, Electricity Distribution Circle Rural, 13 E.C. Road, Dehradun.
5. Sri Shakti Prasad, Executive Engineer, EDD, Doiwala, Dehradun.

**.....Respondents**

**Present:** Sri Shashank Pandey, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for Respondent No.1.  
Sri Manish Kumar Singh, Advocate for Respondents No. 2, 3 & 4.  
Sri Naseem Beig, Advocate for Respondent No. 5.

**JUDGMENT**

**DATED: NOVEMBER 19, 2024.**

**Justice U.C.Dhyani (Oral)**

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

*“a. To issue order or direction to call for records direct the respondents to promote the petitioner from the day the juniors of the petitioner have been promoted i.e. 28.06.2021 along with consequential benefits.*

*b. To issue order directing the Respondents no. 1 to 4 to take action against the Respondent no.5 as per Rule 7(1) of the Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports And Allied Matters) Rules, 2002.*

*c. To give the cost of the petition to the petitioners.*

*d. To give any other relief this Hon'ble court may deem fit and proper in the circumstance of the case.”*

*[Emphasis supplied]*

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

3. Claim Petition has been contested on behalf of Respondents. Counter Affidavit has been filed by Sri K.B. Choubey, General Manager H.R., Uttarakhand Power Corporation Ltd., Dehradun, on behalf of Respondents No. 2 & 3. Counter Affidavit on behalf of Respondent No. 5, has been filed by Sri Shakti Prasad, Executive Engineer, Electricity Distribution Division, Rishikesh, Dehradun. Relevant documents have been filed in support of Counter Affidavits.

4. The nature of reliefs claimed by the petitioner has been mentioned in Paragraph No.1, as above. Facts, which are relevant for deciding the petition, would be mentioned while discussing the merits of the case, to avoid repetition.

5. DPC for promotion of the employees of the Respondent Corporation was held on 26.06.2021. Minutes of such DPC have been brought on record as Annexure: 1. The description regarding the petitioner has been given at internal Page No. 6 of the minutes of DPC,

which has been signed by the General Manager (Convener), Superintending Engineers, (Members) and Chief Engineer as Chairman. It has been mentioned that the integrity of the petitioner was withheld by the Executive Engineer for the periods 01.04.2017 to 31.03.2018 and 01.04.2018 to 11.07.2018 in his ACR. The Accepting Authority has assessed him as 'Good' and 'Satisfactory'. In addition to that, a reference of the letter dated 23.02.2021 has been given. A complaint was received against the petitioner on 10.01.2017. S.D.O., Electricity Distribution, Jolly Grant, Doiwala, was appointed as Enquiry Officer *vide* order dated 01.05.2018. The enquiry report was not received till the date of DPC dated 26.06.2021. The Executive Engineer gave a reminder to the enquiry officer to submit the enquiry report. The Tribunal has been informed that the enquiry has not been concluded as yet. As on the date, petitioner is a retired person.

6. One of the grounds, which has been taken by the petitioner in his petition is that the adverse entry was never communicated to the petitioner. It is the submission of Sri Shashank Pandey, Ld. Counsel for the petitioner that the complaint against the petitioner does not exist and the enquiry against him cannot be conducted on the basis of a complaint which is not supported by an affidavit.

7. In Para 14 of the Counter Affidavit filed on behalf of Respondent Corporation, it has been mentioned that the DPC for promotion of the Office Superintendent Grade-II from the post of Office Assistant Grade-II (Circle) and Office Assistant Grade II (Division) was conducted. Since the petitioner was senior, therefore, his name was recommended for promotion, but integrity of the petitioner for the period 01.04.2017 to 11.07.2018 was withheld and assessment for the period 12.07.2018 to 03.08.2018 was unavailable.

8. In Para 16 of the Counter Affidavit, it has been stated that 3<sup>rd</sup> DPC was conducted on 26.06.2021, in which name of the petitioner was included. On the basis of ACR, the DPC, which was convened on 26.06.2021, opined that the integrity of the petitioner was withheld for the period 01.04.2018 to 31.03.2019 and 01.04.2018 to 11.07.2018, by

the Executive Engineer. The Accepting Authority noted the ACR of the petitioner as 'Good'. The enquiry initiated *vide* order dated 01.05.2018, was still pending against the petitioner. The name of the petitioner was not recommended for promotion.

9. A reference of order dated 11.07.1996, issued by UPSEB has been given in Para 16 of the C.A., to submit that if the integrity of an employee is withheld, the employee will not be considered for promotion at least for three years, whereas, it is submitted by Sri Shashank Pandey, Ld. Counsel for the petitioner that the adverse entry was never communicated to the petitioner. Sri Manish Kumar Singh, Ld. Counsel for Respondent Corporation, on the other hand, emphatically submitted that the adverse entry was communicated to the petitioner. Ld. Counsel for the Respondent Corporation relies upon the letter dated 24.05.2018, issued by the Executive Engineer (Respondent No.5), whereby a show cause notice was given to the petitioner as to why his misconduct be not recorded in his service record. Such letter has not been acknowledged by the petitioner.

10. There is no document on record to suggest that letter dated 24.05.2018 was ever served upon the petitioner. When there is no service of such show cause notice, how could the petitioner reply to the same. The information obtained by the petitioner under RTI dated 12.11.2021, reveals that no document is available in the Respondent Corporation's office to show that procedure for grant or withholding the integrity certificate has been adopted. It is trite law that if any adverse remark/ adverse entry/ withholding of integrity/ adverse order has not been communicated to the delinquent employee, the same cannot be read against him. In the information obtained under RTI on 12.11.2021 itself, it has been quoted that- 'adverse remarks recorded in the ACR of an officer/ official should invariably be communicated to the officer concerned in writing and his acknowledgement should be obtained.' The information obtained under RTI suggests that there is no document in the office of Respondent Corporation to establish that the adverse remarks were ever communicated to the petitioner, what to talk of

obtaining the acknowledgement of communication of such adverse remarks.

11. Rule 4(1) of the Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 (as amended in 2015) reads as under:

“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.”

12. When adverse report was not communicated to the petitioner, the same cannot be read against him. Petitioner is entitled to main relief, on this ground alone.

13. The sole criteria, on the basis of which the petitioner was not recommended for promotion, is dependent on the fact that the integrity of the petitioner was withheld. His ACRs were not up to the mark, although the Accepting Authority has categorized him as ‘Good’ and ‘Satisfactory’ and the enquiry was pending against him which enquiry was not concluded despite a lapse of considerable period. The Bench has been informed that the enquiry has not been concluded against the petitioner till date. The minutes of the DPC dated 26.06.2021, to the extent of holding the petitioner not eligible for promotion, are liable to be set aside.

14. At this stage of dictation, Ld. Counsel for the petitioner did not press Relief b. He submitted that since the desired relief has been granted to the petitioner, therefore, no useful purpose would be served by pressing the said relief (relief-b).

15. The minutes of the DPC dated 26.06.2021, to the extent of holding the petitioner not eligible for promotion are, set aside. Respondents No. 2 and 3 are directed to hold the Review DPC of the DPC dated 26.06.2021 for considering petitioner’s promotion, as per

law, preferably within three months of presentation of certified copy of this order in the office of the Respondent No.2.

16. If petitioner is found fit for promotion, he should be given notional promotion from the date his junior was promoted.

17. Claim petition is, accordingly, disposed of. No order as to costs.

**(ARUN SINGH RAWAT)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: NOVEMBER 19, 2024*  
*DEHRADUN*

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