

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. U.D.Chaube

-----Member (A)

**CLAIM PETITION NO. 01/NB/DB/2014**

Harish Ram, S/o Late Sri Bhawani Ram, Junior Clerk in Pt. Janardan Joshi Government Industrial Training Institute, Almora, presently attached in the Directorate, Training and Employment, Uttarakhand at Haldwani, District Nainital.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Labour and Employment, Uttarakhand Government, Dehradun.
2. Director, Training and Employment Uttarakhand, Haldwani, District Nainital.
3. Joint Director, Directorate of Training and Employment Uttarakhand, Haldwani, District Nainital.
4. Deputy Director, Directorate of Training and Employment Uttarakhand, Haldwani, District Nainital, Principal,
5. Principal, Pt. Janardan Joshi Government Industrial Training Institute, Almora.

.....Respondents

Present: Sri C.S.Rawat, Ld. Counsel  
for the petitioner.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondents

**JUDGMENT**

**DATED: OCTOBER 05, 2016**

**(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. The petitioner filed this claim petition for seeking the following relief:

*“a) To set aside the impugned order dated 4.7.13 and to expunge the adverse entry recorded in the character roll of the petitioner vide order dated 4.7.13.*

*b) To direct the respondents to give promotion to the petitioner on the post of Senior Assistant w.e.f. 26.12.2013 the date on which the counter parts and junior to the petitioner have been given said promotion.*

*c) To direct the respondents to pay/release the withheld salary of the petitioner which was withheld during the period when petitioner was on medical leave.*

*d) To issue any other order of direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.*

*e) Award cost of the petition. ”*

2. Briefly the facts are that the petitioner was initially appointed as Class-IV employee in the Institute of respondents on 17.2.1990. Thereafter, he was promoted to Class-III as junior clerk in 1999, which was challenged in the Hon’ble High Court and after final decision of the Hon’ble High Court, in various writ petitions, on the recommendations of the departmental committee, he was promoted vide order dated 7.12.2013 along with some other persons as junior clerk from the date of their initial promotion on the post.

3. Thereafter, a departmental committee held its meeting for the purpose of promotion from the post of Junior Clerk to Senior Assistant in 2013, but the said committee did not consider the case of the petitioner for promotion and 7 incumbents, who were absorbed as junior clerk along with petitioner vide order dated 7.12.2013, were given promotion and his juniors were promoted. The respondent no. 4 vide letter dated 28.12.2013 had informed the petitioner that his case

was also considered by the departmental committee, but he was not found fit for promotion for the reasons that there is an adverse entry for the year 2012-13 in his character roll.

4. The petitioner has also submitted that the respondent no. 5, Principal of the Institute was having a malice and serious differences with him. The petitioner in his petition has mentioned several facts to show that respondent no. 5 was annoyed with him on certain grounds without his fault. The respondent no. 5 had issued several show cause notice to the petitioner and enquiry was initiated but without waiting the result of enquiry, adverse entry was recorded on 4.7.2013 against which representation was made by him to the superior officer but the same has not been decided as yet, while as per government notification and concerned G.O, it should have been decided in a stipulated period of 165 days and as per Uttarakhand (Lok Seva Ayog Ki Paridhi Ke Bahar) Rajyadhin Sewao Me Padonatti Ke Liye Chayan Prakriya Niyamawali, 2013 and Government Notification dated 18.12.2003, promotion cannot be withheld if the representation is pending. The past five entries of the petitioner are excellent/satisfactory except the last entry of 2012-13 and against the last entry, the representation of the petitioner is still pending and hence, as per law, the petitioner was entitled for promotion, whereas, he has been denied for the same ignoring the Rules.

5. The petitioner has also contended that he moved the representation before the respondents to expunge the entry and to promote him from the date on which his counterparts and juniors have been promoted to the post of Senior Assistant, which is pending and the respondents have not paid any heed on the representation of the petitioner. Hence this petition.

6. The respondents have contested the claim of the petitioner alleging the fact that the petitioner uttered un-parliamentary language

against the respondent no. 5 and put an undue pressure to continue the service of Kailash Singh Chauhan engaged as Chowkidar on contract. The petitioner remained absent without proper permission and his medical certificate was not trustworthy as the doctor had issued a fitness certificate on 7.12.2012 stating the fitness of the petitioner on 13.12.2012 in advance, which cannot be estimated one week earlier. The proper enquiry was conducted. The petitioner had been in the habit of putting pressure and was adopting very indiscipline attitude from time to time and citing all his conduct, his reporting officer correctly entered such adverse entry. The petitioner has not been given any punishment on the basis of any enquiry and the reporting officer was within his right to record his opinion about the work and conduct of the petitioner, which is as per rules and being an adverse entry in his record, the petitioner is not entitled for promotion.

7. The respondents have also contested the petition on the ground that the petitioner has joined multiplicity of cause of action, which is against Rule 10 of U.P. Public Services Tribunal (Procedure) Rules, 1992, which prescribes that every petition shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. Asking for grant of medical leave and claim of salary for that period, is a different cause of action for which, the petition is not maintainable.

8. We have heard both the sides and also perused the departmental file about disposal of representation of petitioner against the annual entry.

9. The petitioner in his petition has raised his case, which is based on different causes of action. Firstly, he challenged the adverse entry recorded in his character roll by the respondent no. 5 vide order dated 4.7.2013 and in relief Clause-(a), he has prayed for the relief to set aside the same and consequently in Clause-(b), he has also prayed for

the relief of promotion on the post of Senior Assistant w.e.f. 26.12.2013 i.e. the date on which his counterparts were promoted. These two reliefs are connected to same cause of action because the promotion was denied on the basis of adverse entry.

10. In Clause-(c) of his relief, the petitioner has also asked for a direction to the respondents to release his withheld salary for the period on which he was on medical leave. In our view, this is a totally different cause of action, because the issue of grant of medical leave was to be dealt with by the controlling authority separately. Rule 10 of the U.P. Public Services Tribunal (Procedure) Rules, 1992, specifically bars joining of different cause of action. The question of granting medical leave still pending is different and the petitioner may approach the appropriate authorities i.e. his controlling authority or appellate authority for passing appropriate orders for grant of his medical leave and release of salary of that period. This exercise is still open for him and the record does not clarify in what manner his application for medical leave has been disposed of. Hence, for this relief, no direction can be given at this level as it is barred by Rule 10 of the said Rules of 1992.

11. As regards the question of recording of adverse entry in his character roll, the petitioner has submitted certain facts to show malice and bias of his reporting officer. The respondents have argued that the conduct of the petitioner was highly indisciplined and his absence without sanction of leave, was against Service Rules and his conduct on several other occasions was highly objectionable, for which his explanation was called for and adverse entry was recorded in his record by the assessing authority. This Tribunal cannot go into the subjective satisfaction of the controlling/reporting authorities because the reporting authority has a right to record annual entry in the service record of his subordinates and the delinquent employee has a right to submit his representation under the relevant rules to the

Superior/Reviewing Authorities. In this case, the petitioner was awarded an adverse entry vide order dated 4.7.2013, which was communicated to him on 17.7.2013 and the petitioner moved his representation on 16.08.2013 before the respondent no. 2, who is superior officer.

12. As per Rule 4 of the Uttaranchal Government Servants (Disposal of Representation Against Annual Confidential Reports & Allied Matters) Rules, 2002, the time limit for disposal of representation is fixed. The Rule 4 is reproduced as below:

“(1).....

(2).....

(3) *The competent authority or accepting authority, as the case may be, shall, within a 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 or 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) *.....”*

Thus, representations against adverse entry must be decided within a total period of 172 days. The State Government has also issued a G.O. dated 18.12.2003, pertaining to the disposal of annual entries and in Clause-26 of the said G.O. mentioned that if against any adverse entry, representation of incumbent is pending then in that event the adverse entry should be ignored for the purpose of promotion and time scale etc. Further, as per Rule 3 of the Uttarakhand (Lok Seva Ayog Ki Paridhi Ke Bahar) Rajyadhin Sewao Me Padonatti Ke Liye Chayan Prakriya Niyamawali, 2013, the five annual entries should be taken into consideration and if 4 entries are satisfactory then the incumbent should be considered for promotion.

13. The argument of the learned counsel for the petitioner is sustainable. The record of the departmental file about proceedings of disposal of his representation shows that the representation of the petitioner against his adverse entry is still pending and it has not been decided as yet, which is against the rules laid down by the government. The petitioner cannot be kept in dilemma for such longer period and the respondents have failed to discharge their duty to dispose off the representation of the petitioner as per Rules. The petitioner has come up before the Tribunal with the prayer to set aside the impugned order dated 4.7.2013 regarding adverse entry against which his representation is still pending before the appellate/reviewing authorities, who has to dispose off it in accordance with the provision of Rules of 2002 and Government Order dated 18.12.2003.

14. The Hon'ble Apex Court in **Dev Dutt Vs. Union of India & others, (2008) 8 SCC, 725**, has also laid down that the government servants should be informed about the annual entries in his record, whatsoever it may be, and he should be given a reasonable opportunity to file his representation, which should be decided within a reasonable time.

15. The record reveals that the respondent no. 2 with whom the representation is pending and who is also discharging the function of Joint Director, is yet to decide the representation of the petitioner. Learned A.P.O. for the respondents has argued that the representation of the petitioner could not have been decided because of the fault of petitioner for the reasons that he had submitted his representation before the respondent no. 2, Director, whereas, the immediate next officer of respondent no. 5 was Joint Director i.e. respondent no. 3. Whereas, learned counsel for the petitioner has argued that the charge of the Joint Director is also lying with the respondent No. 2. In our opinion, if the petitioner has submitted his representation before his higher authority, might be one rank or two ranks senior holding dual charge, his representation should have been decided and it cannot be kept pending just for the reasons that any of post senior to recording officer, is lying vacant and his charge is lying to other officer. The record of the departmental proceedings, clarifies that his matter is being kept pending just by writing letters to one or other authority, which is clear violation of the Rules framed by the government and the concerned government orders in this regard. Until and unless, his representation against for adverse entry is decided by the Reviewing/Appellate Authority, the petitioner's right to come before the Tribunal, is premature. But as the respondents are not discharging their duties as per law, the petitioner has taken the shelter of this Tribunal and his petition needs to be decided with the direction to the respondents to decide his representation without any delay and to act on the basis of



such decision of final entry and to consider accordingly the representation and claim of the petitioner for promotion. Accordingly, following order is passed.

**ORDER**

The claim petition of the petitioner is partly allowed with the direction to the respondents no. 2 and 3 to decide the representation submitted by the petitioner against adverse entry recorded by the respondent no. 5 vide order dated 04.07.2013 within a period of two months from the date of production of certified copy of this order and thereafter, on the basis of the decision of representation, respondents shall consider the claim of the petitioner for promotion to the post of Senior Assistant w.e.f. 26.12.2013 i.e. the date on which his counterparts and juniors had been given such promotion within a further period of six months. No order as to costs.

**(U.D.CHAUBE)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATE: OCTOBER 05, 2016*  
*NAINITAL*  
*KNP*