

**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. 24/NB/DB/2015**

Suresh Chandra, S/o Sri Raja Ram, Executive Engineer, Department of  
Minor Irrigation, Almora, District Almora.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Principal Secretary, Department of  
Minor Irrigation, Government of Uttarakhand, Dehradun.
2. Secretary, Department of Minor Irrigation, Government of  
Uttarakhand, Dehradun.
3. Chief Engineer and HOD, Department of Minor Irrigation, Dehradun.

.....Respondents

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

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

**JUDGMENT**

**DATED: OCTOBER 06, 2016**

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

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

- “i) To set aside the impugned order dated 15.7.2011, 25.7.2011, 3.7.2013, 28.11.2013 and 17.7.2014 issued by the respondent authorities and further with the request to expunge the adverse entry made in his A.C.R.’s for the year 2010-11.
- ii) To direct the respondent authorities to delete the adverse entry for the year 2010-11 which was made in A.C.R.’s of the petitioner, in view of the fact that recovery of loss caused, had already been realized from the petitioner and the petitioner be treated similarly as that of other similarly situated officer were treated in the past.
- iii) To issue any order or direction, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the present case.
- iv) To award the cost of the present claim petition in favour of the petitioner.”

2. The facts in brief are that the petitioner was working as Executive Engineer in the year 2005 to 2007 in District Nainital and was supervising the work of Assistant Engineers and Junior Engineers working under various schemes of Minor Irrigation Department. On the ground of low quality and less measurement of work, a charge sheet was issued on 31.12.2007 to all the persons working at the site including the petitioner on account of lapses of the subordinate Engineers and it was alleged that irregularities in execution of various schemes were committed. The petitioner replied to the charge sheet in detail on 14.05.2008. The enquiry officer, Chief Engineer Level-II without giving any personal hearing to the petitioner, submitted its report to the competent authority on 24.07.2009 and computed a loss of more than two lacs to the government out of which Rs. 1,24,152.98 was assigned on the fault

of the petitioner. On the basis of enquiry report, the State Government issued a show cause notice dated 02.09.2009 to the petitioner, which was replied by him, but without considering the request of the petitioner and without considering the real facts of the matter, the respondent authorities issued the impugned order dated 25.07.2011 and the petitioner was ordered to deposit Rs. 1,12,554.00 and simultaneously an order was made to record an adverse entry in the ACR of the petitioner, whereas similarly situated other persons were given only a warning and recovery of some apportioned amount. After receiving the order of adverse entry, the petitioner moved his representation before the respondent no. 1 on 29.08.2011. The representation of the petitioner was decided on 28.11.2013 after more than two years, which is against the provisions of the Uttaranchal Government Servants (Disposal of Representation Against Annual Confidential Reports & Allied Matters) Rules, 2002. Between July, 2013 to November, 2013, the petitioner further made representations to the Secretary of the Government, Department of Minor Irrigation, but all in vain. The respondent authorities rejected the representation of the petitioner on 17.07.2014. The petitioner in April, 2015 approached to the Hon'ble High Court for redressal of his grievance, but the said writ petition was disposed off with the direction to approach to this Tribunal. Hence this petition.

3. The respondents opposed the petition on the ground that sufficient opportunity was given to the petitioner; duly approved charge sheet was served upon him; his reply was considered and the enquiry officer submitted his report finding some of the charges proved and some were found incorrect. The representation of the petitioner was considered on merit and finding it unsatisfactory, the same was rightly rejected because the petitioner and his junior

officers committed a number of financial irregularities and misappropriated the government money and committed irregularity in execution of the work and the government sustained damages. Hence, disciplinary authority rightly passed an order of recovery of damages equal to loss to the State exchequer by the petitioner and for his misconduct, an adverse entry was also awarded to him, which is as per rules. The measurement of the work was found incorrect; the loss assessed was recovered as per rules; the recovery order as well as adverse entry order is correct, legally perfect in the eyes of law. The claim petition being not sustainable is having no legal force and the same is liable to be dismissed.

4. The petitioner has also filed rejoinder affidavit reiterating the facts mentioned in the claim petition and denied the contention of the respondents. It is further stated that the petitioner was awarded the entry for the year 2010-11 for the alleged irregularities in execution of the work in year 2005 to 2007. The petitioner was only supervising the work, whereas the other Junior Engineers and Assistant Engineers executing the work were only given a warning. The petitioner was indiscriminately treated awarding him adverse entry in his ACRs. It was further stated that the petitioner submitted representation against the adverse entry in time before the competent authority and the competent authority was bound to decide the representation within a stipulated time period as per Rules of 2002 framed in this regard, but the authorities failed to decide the representation within the time frame and clearly violated the rules, which is also the violation of the provisions of the Constitution. The minor punishment imposed by the competent authority in the shape of adverse entry, is not admitted and the same is liable to be quashed being discriminatory and against the provisions of the Rules. The petitioner was not directly guilty in

execution of the schemes and the persons directly responsible for execution of the work were treated softly. The schemes were in Water User Groups and the petitioner department was only responsible for its measurement. The impugned order is liable to be set aside.

5. We have heard learned counsel for the petitioner as well as learned A.P.O. for the respondents and perused the record carefully.

6. By the impugned order, the petitioner was awarded two punishments. Firstly, he was directed to deposit the amount of computed loss to the State exchequer, which was deposited by the petitioner vide different Challans (Annexure: R-3) filed on behalf of the respondents, and respondents admit the same. However, the petitioner has also challenged the amount of recovery to be made from him and has taken the ground that it was not made as per the schemes and rules framed by the government. His representation to this effect was disposed of by the competent authority mentioning that the petitioner was discharging the function of the Assistant Engineer and Executive Engineer both and hence, his share was computed accordingly. This Court does not find any reasons to interfere in this portion of the punishment.

7. As regards the second punishment awarded about adverse entry in the ACR, the petitioner has challenged this punishment on two counts. Firstly, the punishment of adverse entry was given to him with a discrimination because the persons (Assistant Engineers and Junior Engineers) actually working on the sites were also alleged to be responsible for the irregularities in execution of the job, but they were not awarded any adverse entry and simply a warning for future was given to them. The petitioner has also placed certain other examples on record where, in case of any shortfall in execution

of the work resulting any financial loss to the State, was recovered from the engineers without giving any adverse entry and a simple warning was given in so many other matters but the petitioner was treated discriminately and he was given an adverse entry, which is against the principles of natural justice as well as the equal treatment by the State. The petitioner has also alleged that this punishment is also hit by the principles of double jeopardy.

8. The Court is of the view that the Government was justified to recover the financial loss and the government is lawfully authorized in recording of any entry in the assessment of the work of its employees, but while doing so, the discrimination between similarly situated persons is not permitted. It is admitted to the respondents that at the work site for which the irregularity was noticed, the Assistant Engineers and Junior Engineers were also ordered to deposit the amount of loss in proportion, but they were not awarded adverse entry and a simple warning was given to them. The principles of natural justice require that the petitioner who was only supervising that work as Executive Engineer should have been treated similarly, although the amount of recovery of financial loss was proportionately higher in case of the petitioner, which was justified as per his authority but for giving an adverse entry, the petitioner was not treated equally. After passing of the order of punishment, the petitioner submitted his representation on 30.06.2014 (Annexure: 14) and a request was made that like other Engineers, he should also be treated only with a warning instead of adverse entry. This representation was not favourably disposed of. The petitioner rightly claimed this treatment on the basis of equality, but denying the same by the respondents, justified their order.

9. The impugned order of respondents regarding the adverse entry also needs to be set aside on the ground that the

representation of the petitioner was not disposed of by the respondents as per the Rules.

10. The government has framed the Uttaranchal Government Servants (Disposal of Representations Against Annual Confidential Reports & Allied Matters) Rules, 2002 and Rule 4 of the same deals with the matter and according to which, representation against the adverse entries should be disposed of in a fixed period and period has been prescribed for various stages. The Rules require that when any representation against the adverse entry is submitted to the competent authority or accepting authority as the case may be, the representation should be sent within a week to the appropriate authority who has recorded the adverse remark to give its comments, who is duty bound to submit his comments to the competent authority within 45 days and the competent authority on receipt of his comments is duty bound to decide the representation within 120 days from the date of expiry of 45 days. Hence, the whole exercise about disposal of representation against the adverse entry should be completed within 172 days. But in the case of the petitioner, the representation against the adverse entry, submitted on 29.08.2011 was not decided even after passing a period of about two years and it was decided on 03.07.2013. Hence, the disposal of the representation by the respondent authorities was not made according to Rules framed by the government. However this irregularity was further brought to the notice of the Secretary to the Government along with indiscriminate treatment with him, but the respondent government did not reacted as per the law and in a cursory manner, his representation was rejected.

11. The Hon'ble Supreme Court in **Dev Dutt Vs. Union of India & others,(2008) 8 SCC, 725**, has laid down that the employee should be informed about his annual remarks so that he may submit his

representation and his representation must be decided within a reasonable time.

12. The Tribunal is of the view that after awarding of punishment of adverse entry, his representation against the adverse entry was not decided within reasonable time and principles of natural justice were not adhered to. Accordingly, the impugned order regarding adverse entry in the ACR of the petitioner deserves to be set aside and the adverse entry recorded in the ACR of the petitioner is liable to be deleted and the respondents should be ordered to pass suitable order treating the petitioner similarly with other persons.

**ORDER**

The claim petition is partly allowed. The impugned order dated 15.7.2011 (Annexure No. 1) is set aside to the extent of recording of adverse entry in the ACR of the petitioner. The respondents are directed to delete the adverse remark recorded in the ACR of the petitioner and to pass appropriate order treating the petitioner as in the case of similarly situated other persons. No order as to costs.

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

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

*DATE: OCTOBER 06, 2016*  
*NAINITAL.*

*KNP*