

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

Present: Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

**CLAIM PETITION NO. 14/SB/2016**

Birendra Prasad, S/o Sri M.R.Arya, presently posted as Section Officer,  
Home, Section-3, Civil Secretariat, Uttarakhand, Dehradun.

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Secretariat Administration  
Department, Civil Secretariat, Dehradun, Uttarakhand.
2. Secretary, Culture, Tourism and Sports, Government of Uttarakhand,  
Dehradun.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel  
for the petitioner.

Sri Umesh Dhaundiya, Ld. A.P.O.  
for the respondents.

**JUDGMENT**

**DATE: FEBRUARY 28, 2017**

1. The petitioner has filed the present claim petition for seeking  
the following relief:-

“i) To quash the impugned order dated 08.08.2011 issued  
by the respondent No. 2 and office order dated 18.05.2015  
issued by the respondent no. 1 (Annexure A-1 and A-2 to the  
petition) declare the same as null and void.

- ii) To issue an order or direction to the respondents to delete the special adverse entry from the service records of the petitioner.
- iii) To issue an order or direction to the respondents to promote the petitioner on the post of Under Secretary from the date when Juniors to the petitioner were promoted i.e. 18.04.2015.
- iv) To issue an order or direction to the respondents to grant the benefit of ACP to the petitioner ignoring the alleged special adverse entry from the date when the juniors to the petitioner have been extended the said benefits.
- v) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- vi) To award the cost of the case."

2.1 The petitioner is a Section Officer in the Secretariat of the Government of Uttarakhand.

2.2. The petitioner, when he was posted as Section Officer in the Department of Tourism, was given the following "Special Adverse Entry" on 08.08.2011 for the year 2011-12 (Annexure: A1) :-

"श्री बिरेन्द्र प्रसाद, अनुभाग अधिकारी के द्वारा पर्यटन एवं धर्मस्व अनुभाग में तैनाती की अवधि में श्री बदरीनाथ-केदारनाथ मंदिर समिति के संदर्भ में दो पद सृजन सम्बन्धित शासनादेशों में शासन स्तर पर लिए गये निर्णय के विरुद्ध कूटरचर्चायें करते हुए निहित स्वार्थवश एवं मंदिर समिति के कतिपय कार्मिकों को लाभ पहुँचाने के उद्देश्य से फर्जी शासनादेश जारी किये गये, जो बाद में मंदिर समिति के संज्ञान दिलाने पर शासन के संज्ञान में आये। इन शासनादेशों का अनुपालन हालांकि शासन स्तर से तत्काल रोक दिया गया था तथापि श्री प्रसाद के इस कृत्य से शासन की

छवि धूमिल हुयी। अतः उनके इस कृत्य के लिए उनकी भर्त्सना के साथ यह विशेष प्रतिकूल प्रविष्टि प्रदान की जाती है।”

2.3 The “Adverse Entry” was communicated to the petitioner vide letter dated 02.09.2011 which is reproduced below:-

“उत्तराखण्ड शासन  
सचिवालय प्रशासन (अधि0) अनुभाग-1  
संख्या : 1045/XXXI(1)/2011  
देहरादून : दिनांक 02 सितम्बर, 2011

श्री बिरेन्द्र प्रसाद,  
(तत्कालीन अनुभाग अधिकारी,  
संस्कृति, पर्यटन एवं खेलकूद अनुभाग-1)  
सम्प्रति-अनुभाग अधिकारी,  
कार्यक्रम क्रियान्वयन अनुभाग।  
उत्तराखण्ड सचिवालय।

कृपया प्रभारी सचिव, धर्मस्व विभाग के कार्यालय ज्ञाप संख्या 1628/VI(1)/2011-12(5)/2008 दिनांक 08 अगस्त, 2011 का संदर्भ ग्रहण करने का कष्ट करें, जिसमें श्री बदरीनाथ एवं श्री केदारनाथ मंदिर समिति के पद सृजन के संबंध में जारी किये गये शासनादेशों में पायी गयी भिन्नता के दृष्टिगत श्री बिरेन्द्र प्रसाद, तत्कालीन अनुभाग अधिकारी, संस्कृति, पर्यटन एवं खेलकूद अनुभाग-1 पर दोष सिद्ध हो जाने के फलस्वरूप उन्हें वर्ष 2011-12 के लिए विशेष प्रतिकूल प्रविष्टि प्रदान करते हुए उक्त ज्ञाप दिनांक 08 अगस्त, 2011 की एक प्रति आपको तामील कराने जाने की अपेक्षा की गयी है।

2- अतः इस संबंध में प्रभारी सचिव, धर्मस्व विभाग, उत्तराखण्ड शासन के कार्यालय ज्ञाप संख्या 1628/VI(1)/2011-12(5)/2008 दिनांक 08 अगस्त, 2011 की एक प्रति संलग्न कर आपको इस आशय से तामील/संसूचित की जा रही है कि इस संबंध में अपना प्रत्यावेदन पत्र प्राप्ति के 45 दिन के अन्दर सचिवालय प्रशासन विभाग को उपलब्ध कराना सुनिश्चित करें, यदि निर्धारित समयान्तर्गत आपका प्रत्यावेदन प्राप्त नहीं होता है तो यह समझा जायेगा कि आपको इस संबंध में कुछ नहीं कहना है और तदनुसार नियमानुसार कार्यवाही की जायेगी।

ह0/-

(भूपाल सिंह मनराल)  
अपर सचिव”

2.4 The petitioner made a representation against the “Adverse Entry” on 19.10.2011. On the representation of the petitioner, the comments of respondent No. 2 who gave special adverse entry were sought on 29.11.2011. Respondent No. 2 provided comments to respondent No. 1 on 31.01.2012. The representation of the petitioner against the “Adverse Entry” was considered and decided by respondent No. 1 on 18.05.2015 and the same was rejected (Annexure: A2).

3. **The main ground on the basis of which the “Adverse Entry” and “rejection of the representation” has been challenged by the petitioner is that the representation against the adverse entry has not been decided within the stipulated time period prescribed under “The Uttarakhand Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002. These rules have been referred to as “Rules of 2002” hereinafter.**

4. Respondent No. 1 has opposed the claim petition and it has been stated that the representation of the petitioner has been rejected under Rule 4 (5) of the Rules of 2002.

5. The petitioner has also filed the rejoinder affidavit and the same averments which were stated in the claim petition have been reiterated in it.

6. I have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of respondents and also perused the record.

7. Before rival contentions of the parties are discussed, it would be appropriate to state the Rule position related to adverse

entry. The relevant rules are Rule 4 and Rule 5 of the Rules of 2002 which are reproduced below :-

**Rule-4**

***“ 4. Communication of adverse report and procedure for disposal of representation—***

*(1) 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.*

*(2) A Government Servant may, within a period of 45 days from the date of communication of adverse report under sub-rule (1), represent in writing directly and also through proper channel to the authority one rank above the accepting authority hereinafter referred to as the competent authority, and if there is no competent authority to the accepting authority itself, against the adverse report so communicated :*

*Provided that if the competent authority or the accepting authority, as the case may be, is satisfied that the Government Servant concerned had sufficient cause for not submitting the representation within the said period, he may allow a further period of 45 days for submission of such representation.*

(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 .....*

**(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) Where the competent authority due to any administrative reasons, is unable to dispose of the representation within the period specified in sub-rule(4), he shall report in this regard to his higher authority, who shall pass such orders as he considers proper for ensuring disposal of the representation within the specified period.**

(6).....

(7).....

(8).....

(9).....

*Explanation-- .....".*

**Rule-5**

**"5. Report not to be treated adverse-- Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Hand-book, Volume-II, Parts-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".**

8. The perusal of above rules reveals that after the representation of the petitioner against the adverse entry is received, the same will be transmitted to the authority who has recorded the adverse entry within a week from the date of receipt of the representation for his comments, who shall, within a period not exceeding 45 days, furnish his comments to the competent authority/accepting authority. Sub-Rule-4 of Rule-4 provides that the representation against the adverse entry shall be decided within a period 120 days from the date of expiry of 45 days specified in Sub-Rule-3 of Rule-4. Sub-Rule-5 of Rule 4 provides that where the competent authority due to any administrative reasons, is unable to dispose of the representation within the period specified in Sub-Rule-4 of Rule-4, he shall report in this regard to his higher

authority, who shall pass such orders as he considers proper for ensuring disposal of the representation within the specified period.

9.1. Learned counsel for the petitioner has argued that according to Sub-Rule-3 and Sub-Rule-4 of Rule-4, the representation of the petitioner against the adverse entry must have been decided within a period not exceeding 172 days (7+45+120). He has contended that the representation of the petitioner has been decided in 1316 days in gross violation of Rule 4 of the "Rules of 2002". Learned A.P.O. has stated in his counter argument that the representation of the petitioner has been decided under Sub-Rule-5 of Rule-4 on 18.05.2015 after taking the approval of the Chief Secretary, Government of Uttarakhand by the Department of Secretariat Administration and, therefore, there is no delay in the disposal of the representation of the petitioner.

9.2 It is difficult to agree with the argument of learned A.P.O. Firstly, learned A.P.O. could not demonstrate that due to any administrative reason, the competent authority was unable to dispose of the representation within the period specified in Sub-Rule-4 of Rule-4 and the competent authority referred the matter to the higher authority under Sub-Rule-5 of Rule-4 of the "Rules of 2002". Secondly, learned A.P.O. could also not demonstrate that the higher authority (the Chief Secretary) passed any order under Sub-Rule-5 of Rule-4 of the "Rules of 2002". Thirdly and more importantly, Sub-Rule-5 of Rule-4 does not allow to give additional time to dispose of the representation. A careful perusal of Sub-Rule-5 of Rule-4 clearly shows that when the competent authority due to any administrative reason is unable to dispose of the representation within the period specified in Sub-Rule-4 of Rule-4, he shall report in this regard to the higher authority and the higher authority shall



pass an appropriate order for ensuring disposal of the representation within the period specified under Sub-Rule 4 of Rule-4. Sub-Rule-5 of Rule-4 deals with a situation where the matter is reported by the competent authority to the higher authority expressing his inability to dispose of the representation within the specified time due to any administrative reason and it is not a provision to permit extra time to dispose of the representation by the higher authority. Any order under Sub-Rule-5 of Rule-4 shall necessarily be for ensuring the disposal of representation within the specified period under Sub-Rule-4 of Rule-4. Thus, the respondents in their written statement and learned A.P.O. in his arguments have failed to explain the delay of more than 3 years in disposing of the representation of the petitioner against the adverse entry.

10. Learned A.P.O. also argued that the petitioner has been given special adverse entry during the course of the year. It is not a normal annual adverse entry. "Rules of 2002" deal with the normal annual adverse entry and, therefore, procedure to dispose of representation against "Special Adverse Entry" has not been provided under "Rules of 2002". There is no force in the argument of learned A.P.O. On the one hand, learned A.P.O. has argued that the representation of the petitioner has been decided under Sub-Rule-5 of Rule-4 of the "Rules of 2002" and on the other hand, he has stated that there is no provision in the "Rules of 2002" to deal with the special adverse entry. Moreover, the Government Order No. 1712/Karmik-2/2003 Dated 18th December, 2003, paragraph 16 has clarified the position of special adverse entry given during the course of a year. This paragraph prescribes that the procedure for disposal of the representation against special adverse entry will be

the same which is prescribed for normal annual adverse entry. The para 16 of the said G.O. is reproduced below:

“कभी-कभी विशेष अनुकूल या प्रतिकूल प्रविष्टि किसी घटना/कार्य विशेष के सम्बन्ध में दी जाती है। विशेष प्रविष्टि अंकित करने के बारे में ठीक वही प्रक्रिया अपनायी जायेगी जो सामान्य वार्षिक प्रविष्टि अंकित करने हेतु अपनायी जाती है, किन्तु यह ध्यान में रखा जाना चाहिए कि ऐसी विशेष प्रविष्टि किसी घटना/कार्य विशेष के सम्बन्ध में ही हो तथा इसमें सामान्य मूल्यांकन न किया गया हो। यदि ऐसी विशेष प्रविष्टि प्रतिकूल हो तो उसे संसूचित करने तथा उसके विरुद्ध प्राप्त प्रत्यावेदन के निस्तारण के सम्बन्ध में वही प्रक्रिया अपनायी जाये जो सामान्य प्रतिकूल प्रविष्टियों के सम्बन्ध में अपनायी जाती है। विशेष प्रविष्टियां आलोच्य वर्ष में किसी भी समय आवश्यकतानुसार दी जा सकती हैं किन्तु यह प्रयास किया जाना चाहिए ऐसे अवसर बहुत कम और कभी-कभी अत्यावश्यक स्थिति में ही सामने आये। सामान्य तौर पर ऐसे मामलों का सामवेश वार्षिक प्रविष्टि में ही किया जाना अधिक उपयुक्त होगा।”

11. In view of above, in the case at hand admittedly the representation against the special adverse entry was given by the petitioner on 19.10.2011. Admittedly, the representation against the adverse entry was disposed of on 18.05.2015. Thus, it is clear that the representation against the adverse entry was decided after more than three and half years which is much beyond the limit prescribed under Sub-Rule-4 of Rule-4 of the “Rules of 2002”.

12. **Rule-5 of the “Rules of 2002” provides that where a representation against an adverse entry has not been disposed of in accordance with Rule-4, such entry shall not be treated adverse for the purpose of promotion, crossing of Efficiency of Bar and other service matters of the Government Servant concerned.**

13. In the light of discussion in paragraph 8 to 12, I reach a conclusion that the representation of the petitioner against the

adverse entry has not been disposed of in accordance with Rule-4 and, therefore, such adverse entry shall not be treated adverse for the purpose of promotion, crossing of Efficiency of Bar and other service matters of the petitioner as provided under Rule 5 of the "Rules of 2002".

14. Learned counsel for the petitioner and learned A.P.O. have not raised any other issue in the case.

15. For the reasons stated above, the claim petition deserves to be allowed.

### **ORDER**

The petition is hereby allowed. The orders dated 08.08.2011 (Annexure: A1) and 18.05.2015 (Annexure: A2) are set aside. The entry given to the petitioner by the impugned order (Annexure: A1) shall not be treated adverse for the purpose of promotion, crossing of efficiency of bar and other service matters of the petitioner. The petitioner will also be entitled for consequential benefits, if any, as per law and rules. No order as to costs.

(D.K.KOTIA)  
VICE CHAIRMAN (A)

DATE: FEBRUARY 28, 2017

DEHRADUN.

KNP