

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

**CLAIM PETITION NO. 35/SB/2017**

Sunil Kumar S/o Sh. Chandra Shekhar aged about 49 years at present posted and working as officiating Executive Engineer in A.D.B. (Aapda) Division, Public Works Department, Pauri Garhwal.

.....Petitioner

**VS.**

1. State of Uttarakhand through Secretary, P.W.D., Government of Uttarakhand, Secretariat, Dehradun, District Dehradun, Uttarakhand.
2. Engineer-in-Chief & Head of the Department, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.
3. Superintending Engineer, Eight Circle, Public Works Department, New Tehri.

.....Respondents.

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

Sri U.C.Dhaundiyal, A.P.O.  
for the Respondents.

**JUDGMENT**

**DATED: FEBRUARY 20, 2018**

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

1. Being satisfied with sufficiency of reasons thus furnished in support of delay in filing the claim petition, the delay is condoned. Application made therefor is, accordingly, disposed of.
2. The reliefs sought by the petitioner, in present claim petition are, as follows:
  - i. To quash the impugned adverse entry awarded by the respondent No.3 for the period 01.04.2013 to 30.04.2013 (Annexure No. A-1) and office order dated 29.01.2016 issued by

the respondent No.1 (Annexure A-2) declare the same as null and void.

- ii. To issue an order or direction to the respondents to delete the adverse entry from the service records of the petitioner.
  - iii. To issue an order or direction to the respondents to grant the benefit of first ACP to the petitioner since 16.03.2014, the date when the petitioner completed his 10 years regular service, ignoring the alleged adverse entry with all consequential benefits.
  - iv. To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
  - v. To award the cost of the case.”
3. Briefly put, the facts of present claim petition are that the petitioner, who was posted as In-charge Executive Engineer in Public Works Department at Ghansali ( Tehri), was awarded adverse entry for the period 01.04.2013 to 30.11.2013. Adverse entry was communicated to the petitioner by Respondent No.2, vide letter dated 18.12.2014. Petitioner preferred representation to Respondent No.2 against such adverse entry, and prayed for expunction of the same from his service record.
4. The said representation of the petitioner was dismissed by Respondent No.1. Hence, present claim petition.
5. It is the submission of Ld. Counsel for the petitioner that the representation of the petitioner has not been decided as per the Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 (hereinafter referred to as Rules of 2002) . In other words, the submission of Ld. Counsel for the petitioner is that, the representation of the petitioner was not decided within the time frame, as stipulated in the aforesaid Rules.
6. Sri Umesh Dhaundiya, Ld. A.P.O. submitted that, serious allegations have been levelled against the petitioner while

awarding adverse entry. Ld. A.P.O. underlined that the petitioner kept his mobile phone switched off for two days, while on duty at Ghansali. Necessary information, which was required to be supplied by the Superintending Engineer to the Principal Secretary of Government, could not be given on this account. No explanation was offered by the petitioner despite having given time to submit the same. The budget, which was allotted under District Planning, was not spent by the petitioner and no explanation was offered on this account also. Therefore, he was awarded adverse entry by his superior, i.e., by the Reporting Officer (Superintending Engineer). The said adverse entry was accepted by the then Chief Engineer, Public Works Department. The petitioner moved a representation against the same. The said representation was dismissed, vide order dated 29.01.2016 (Annexure: A 2).

7. Ld. Counsel for the petitioner submitted that, the petitioner moved a representation on 27.02.2015 and his representation was decided on 29.01.2016, almost after about eleven months, which is violation of Rules of 2002. Rules 4 and 5 of the aforesaid Rules read as under:-

*“4. (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 of 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) .....*

*(6) .....*

*(7) .....*

*(8) .....*

*(9) ..... ”*

**5. 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. It is pointed out by the Ld. Counsel for the petitioner that similar controversy has been decided by this Tribunal on 26.02.2016 in claim petition No. 64/SB/2014 Dr. Sanjeev Dutt Vs. State and others as follows:-

“Perusal of above Rules makes it clear that Sub-Rule (4) of Rule 4 provides that the representation against the adverse entry is to be decided within a period of 120 days from the date of expiry of 45 days specified in Sub-Rule (3) of Rule 4. Rule 5 of the said Rules provides that if 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 purpose of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned.”

9. Adverting to the facts of Claim Petition of Dr. Sanjeev Dutt, it was observed by this Court as under: -

*“When the case in hand is examined in the light of Rule position as above, we find that admittedly the representation against the adverse entry was given by the petitioner on 19.11.2012. Admittedly, the representation against the adverse entry was disposed of on 17.07.2014. Thus, it is clear that the representation against the adverse entry was decided after more than 19 months which is much beyond the limit prescribed under Sub-Rule 4 of Rule 4 of the said Rules. Since the representation against the adverse entry was not disposed of in accordance with Rule 4, such report shall not be treated adverse for any service matter of the petitioner as prescribed under Rule 5 of the said Rules. Thus, in our view, the representation against the adverse entry has not been disposed of in accordance with Rules and therefore, the adverse entry given to the petitioner cannot sustain and it is, therefore, non est.”*

10. The controversy in hand is, therefore, squarely covered by the decision of Dr. Sanjeev Dutt’s case. It has been informed by the Ld. A.P.O. that, the decision dated 26.02.2016 in Dr.

Sanjeev Dutt's claim petition has not been assailed and has, therefore, attained finality.

11. As has been mentioned above, the representation dated 27.02.2015, of the petitioner, could be decided only on 29.01.2016, which is, admittedly, beyond time limit prescribed under sub rule (4) of Rule 4 of the Rules of 2002. The adverse entry awarded to the petitioner is, therefore, *non est*.
12. The claim petition is, accordingly, allowed. The impugned adverse entry awarded by Respondent No.3 for the period 01.04.2013 to 30.04.2013, impugned order dated 18.12.2014 passed by Respondent No.2 and order dated 29.01.2016 passed by Respondent No.1 are hereby set aside. Impugned adverse remarks entered into the character roll of the petitioner, are hereby expunged. The petitioner will be entitled to consequential benefits, if any, as per law. No order as to costs.
13. It is made clear that this Court has not gone into the merits of the allegations levelled against the petitioner in adverse entry.

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

*DATE: FEBRUARY 20, 2018*  
*DEHRADUN*

VM