

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

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 15/DB/2014

Shri Krishan Kumar, S/o Late Sri Shingaru Singh, 56, H.C.P. 7, presently posted at Police Station-Kotwali, District Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home Affairs, Civil Secretariat, Dehradun.
2. Director General of Police, Uttarakhand, Police Headquarters, Subhash Road, Dehradun.
3. Senior Superintendant of Police, Dehradun.
4. H.C. No. 12 CP Dharpal Singh, R/o Kotwali, Dehradun.
5. H.C. No. 1, C.P, Genda Lal, R/o P.S. Cantt, Dehradun.
6. H.C. No. 37 C.P., Vijendra Saklani, R/o S.S.P. Office, Dehradun.
7. H.C. NO. 66,C.P., Bhagwat Prasad, R/o S.S.P. Office, Dehradun, Mahila Help line.
8. H.C. No. 46, C.P., Amar Singh, R/o P.S.Patel Nagar, Dehradun.
9. H.C. NO. 54, C.P., Khilafi Lal, P.S. Doiwala, Dehradun.
10. H.C.No. 58, C.P. Ranjit Ram, P.S. Nehru Colony, Dehradun.
11. H.C. No. 2, C.P. Thakur Singh, R/o Police Line, Dehradun.

12. H.C. No. 33, C.P. Kabool Singh, P.S. Patel Nagar, Dehradun.

13. H.C. NO. 60, C.P. Balwant Singh, P.S., G.R.P., Dehradun.

14. H.C.NO. 16, C.P. Kailash Singh, S.S.P. Office, Dehradun.

.....Respondents

Present: Sri L.D.Dobhal, Ld. Counsel
for the petitioner.
Sarvsri U.C.Dhaundiyal &
V.P.Devrani, Ld. A.P.Os.
for the Respondents No. 1 to 3

JUDGMENT

DATED: MARCH 23, 2018

Justice U.C.Dhyani (Oral)

Principal prayer of the petitioner, in present claim petition, is to direct the respondents to promote the petitioner to the post of Sub-Inspector (Special Category) from the date his juniors were promoted.

2. It may be stated, at the very outset, that the petitioner has been promoted to the post of Sub-Inspector, but he desires his promotion from the back date, on which his juniors were promoted.

3. The facts of present case lie in a narrow compass. Petitioner, at the time of filing claim petition, was posted as Head Constable (Special Category) in Civil Police. In March, 2013, he came to know that Respondents No. 2 & 3 had promoted 19 Head Constables to the post of Sub-Inspector (Special Category). Then, he realized that whereas, his juniors have been promoted to the post of Sub-Inspector, he himself was not found fit for promotion. The petitioner wanted to know the reason as to why he was not promoted, but he was clueless.

The petitioner, then personally went to Respondent No. 3 to know about the same. Respondent No. 3 told the petitioner, on the basis of guesswork, that he might not have been found fit in the DPC and, therefore, has not been promoted.

4. Thereafter, on making several inquiries from the office of Respondent No. 2, the petitioner came to know on 22.08.2013, that he was given an 'adverse remark' in his ACR and, therefore, he was not considered fit for promotion. Such 'adverse entry' was never communicated to the petitioner. He made a representation on 07.09.2013 to Respondent No. 3, but to no avail. Hence, present claim petition.

5. The Head Constables, junior to the petitioner, were arrayed as Respondents No. 4 to 14. Nobody has come to argue on their behalf, despite service of notices upon them

6. Learned counsel for the petitioner submitted that, assuming for the sake of argument, even if there is 'adverse entry' in petitioner's ACR for the years 2005 and 2009, such entries cannot be looked into, for the purpose of promotion, inasmuch as, the same were not communicated to the petitioner. Learned counsel for the petitioner made a reference of Rule 5 of the U.P. Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995, in support of his contention.

7. Learned Assistant Presenting Officers submitted that the petitioner has rightly been denied promotion, in view of the averments contained in the Counter Affidavit, duly supported by the documents enclosed in support thereof. A perusal of the order dated 23.11.2009, passed by the Senior Superintendent of Police, Dehradun (Annexure: R-1), would indicate that integrity of the petitioner was withheld in the year 2009, for the reasons indicated in the selfsame

order. These were serious allegations against him. Principal reason was that the petitioner gave wrong statement in the court with regard to technical report of a vehicle, which pertained to a case of accident, relating to Chowki Herbertpur, P.S. Vikas Nagar. The other accusation against the petitioner was that he tore relevant pages of postal register, maintained by the Constable Clerk in P.S. concerned. The petitioner, on preliminary inquiry, was found guilty and he was also awarded minor punishment of 'censure entry' under the U.P. Police Officers of the Subordinate Rank (Punishment & Appeal) Rules, 1991. Thus, he was awarded censure entry in the year 2009 and his integrity was also withheld for the selfsame year. Two separate orders were necessitated, because, one relates to 'withholding of integrity' and other relates to 'censure entry'.

8. It is surprising to note that despite due opportunity of hearing given to the petitioner before passing both the orders, the petitioner did not turn up before them. 15 days' show cause notice was given to the petitioner, but he did not avail of this opportunity. Neither did he appear before the authority concerned, nor did he file any explanation. There was clear statement in the show cause notice that if he did not appear or failed to reply within 15 days, it will be presumed that he has nothing to say in the matter (and further proceedings shall be held *ex-parte* against him). It has clearly been mentioned in both the orders that despite opportunity, the petitioner did not submit anything. Considering the gravity of the matter, he was awarded censure entry, and, as has been stated earlier, his integrity for the year 2009, was withheld. The other course open to the petitioner was, to file departmental appeal against the selfsame order. He has not filed the same.

9. The main plank of petitioner's argument is that, adverse entry was not communicated to him. A perusal of Annexure-R1 (withholding of integrity) and Annexure: R2 (censure entry) will

indicate that copies of these two orders, which were passed on 23.11.2009, were given to the petitioner. In both Annexures: R-1 and R2, petitioner appended his signatures of receipt. Thus, it does not lie in his mouth to say that these orders were not communicated to him. Learned counsel for the petitioner vehemently argued that petitioner's signatures merely indicated that he has received the copies of the orders (Annexure: R1 and R2). According to him, there is breach of Rule 4 of the U.P. Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 1995. The argument of learned counsel for the petitioner appeared attractive at the first blush, but a careful reading of these Rules would reveal that the petitioner has no case. The reasons are being given herein below.

10. The very title of the Rules of 1995 would indicate that they relate to disposal of the representations against the adverse annual confidential report and allied matters. Further, the word 'report' has been defined in Rule 3(e) to mean:-

"3(e) "report" means annual confidential report regarding the work, conduct and integrity of a Government Servant for each year recorded by an appropriate authority, who has seen the performance of the Government servant for not less than a continuous period of three months."

11. In the instant case, Annexure: R1 and R2 are not in the form of routine annual confidential reports (ACRs). Annexure: R1 and R2 have been passed after giving due opportunity of hearing to the petitioner. Petitioner was given 15 days' show cause notice, but, as has been stated above, the petitioner failed to respond to such notice. Neither did he appear in person nor he filed any explanation. The allegations against him have also been mentioned in paragraph 7 of this judgment. Accusations were serious in nature and therefore, Annexure: R1 and R2 have not been passed in a routine manner. Only

after careful scrutiny, the allegations levelled against the petitioner have been substantiated. Had any remark been made against the petitioner in ACR, in a routine course, then it was incumbent upon the authorities concerned to have communicated the same to the petitioner, once the adverse remark was approved by the Accepting Authority, in terms of Rule 4 of the Rules of 1995. Here, the case is different. In the instant case, petitioner was duly informed, through notice in writing, as to what are the allegations against him and whether he wanted to say something on those accusations or not? He did not do so. The petitioner failed to respond to the notice and only after adequate opportunity of hearing, Annexure: R1 and R2 were passed by the S.S.P., Dehradun and copies whereof, were got received to the petitioner. It was not ACR. It was in the shape of special entry. Therefore, there is no applicability of Rule 4 of the 1995 Rules in the given facts of the case.

12. We are, therefore, unable to agree with the submission made by the learned counsel for the petitioner that since adverse entry was not communicated to the petitioner, therefore, withholding of promotion of the petitioner, on the basis of DPC, on the day, his juniors were promoted, is bad in law. On a careful consideration of rival submissions, we come to the following conclusions:

- (a) The petitioner did not avail of the opportunity of hearing, despite notice, before passing orders impugned.
- (b) The petitioner has also not taken recourse to alternative remedy to file departmental appeal.
- (c) 1995 Rules are not applicable, in the backdrop of facts, forming nucleus of present claim petition.
- (d) This Tribunal has, therefore, no option but to dismiss present claim petition

13. For the reasons stated herein above, we see no reason to allow the present claim petition. Claim petition, therefore, fails and is dismissed. No order as to costs.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 23, 2018
DEHRADUN

KNP