

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 11/NB/SB/2017

Diwani Ram, S/o Late Sri Kishan Ram. R/o Village Raikot Kunwar (Bunga),
Post Office Lohaghat, District Champawat, presently posted as Revenue
Sub Inspector, Khilpati, Tehsil Lohaghat, District Champawat.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Revenue, Government of Uttarakhand, Dehradun.
2. District Magistrate, Champawat.
3. Sub Divisional Magistrate, Lohaghat, District Champawat.
4. Naib Tehsildar, Barakot, District Champawat.

.....Respondents

Present: Sri Bhaskar Chandra Joshi, Ld. Counsel
for the petitioner.

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

JUDGMENT

DATED: APRIL 10, 2018

HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A)

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

"(i) to quash the impugned part of order dated 27.12.2016 and order dated 30.03.2017 passed by the respondent No. 2 in respect of refusal to grant the benefit of 3rd A.C.P. to the petitioner.

(ii) to issue direction to the respondent directing the respondents to grant 3rd A.C.P. and Grade Pay of Rs. 5400/- to petitioner from the date he is entitled.

(iii) to pass any other relief, order or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

(iv) Award the cost of the claim petition to the petitioner."

2. The petitioner was initially appointed as Patwari in the year 1985 and is presently posted as Revenue Sub Inspector, Khilpati, Tehsil Lohaghat, district Champawat. The grievance of the petitioners is that he was refused the 3rd promotional pay scale in the scheme of Assured Career Progression (ACP). While the others were granted 3rd ACP vide order dated 27.12.2016 (Annexure: A1), the name of the petitioner does not appear in this list for the sanction of 3rd Promotional Pay Scale (grade pay of Rs. 5400). It has been stated by the petitioner that he made a number of representations to the various authorities, but of no avail. The petitioner also filed a writ petition No. 283 of 2017 before the Hon'ble High Court at Nainital which was dismissed on 22.02.2017 on the ground of alternative remedy before the Public Services Tribunal.

3. State Respondents No. 1 to 4 have opposed the claim petition and it has been stated in their joint written statement that

the reason for not granting the benefit of 3rd ACP to the petitioner in the grade pay of Rs. 5400 is that there were adverse entries in the Character Roll of the petitioner for the years 1986-87, 1988-1989, 1990-91, 1991-92, 1993-94, 1999-2000 and 2003-04 and, therefore, he was not found suitable for granting the 3rd ACP after completion of 26 years of service in accordance with the G.O. dated 08.03.2011.

4. The petitioner has filed a rejoinder affidavit and he has stated in his rejoinder that the adverse entries awarded to him in the years 1986-87, 1988-89 and 1990-91 were not communicated to him and, therefore, according to the relevant rules, they cannot be considered adverse for the purpose of granting the 3rd ACP. It has further been stated by the petitioner that the adverse entry awarded to him in the year 1993-94 was quashed by the Hon'ble High Court vide its order dated 20.10.2005. Furthermore, the adverse entry awarded to the petitioner in the year 2003-04 was declared non-est by the Commissioner, Kumoun Division, Nainital on 21.10.2009. The petitioner has submitted that there were only two adverse entries in the year 1991-92 and 1999-2000 and on the basis of these adverse entries, his 3rd ACP which became due in 2011 cannot be refused.

5. Learned counsel for the petitioner has also stated that the petitioner has come to know about refusal of the 3rd ACP on the ground of these 7 adverse entries through the W.S. filed by the respondents. He has also submitted that out of these 7 adverse entries, 5 adverse entries were such which were either not communicated to the petitioner or were quashed/withdrawn by

the competent authority/court and the 3rd ACP could not be refused on the ground of remaining two adverse entries.

6. The respondents have not filed any additional C.A/W.S. in reply to the Rejoinder filed by the petitioner.

7. After arguing the claim petition at some length, both the parties agreed that adequate record is not available before this Tribunal to adjudicate upon the issue of the adverse entries and, therefore, the relief in regard to granting of 3rd ACP to the petitioner cannot be looked into by the Tribunal in the absence of such material.

8. At this stage of hearing, learned counsel for the petitioner confined his prayer only to the extent that the petitioner may be allowed to submit a representation to the respondents to clarify the status of various adverse entries and consequently, his claim for entitlement of 3rd ACP and the respondents may be directed by the Tribunal to dispose of petitioner's representation by a reasoned and speaking order.

9. Learned A.P.O. has no objection on the request of petitioner mentioned in paragraph 8 above.

10. The innocuous prayer made by the petitioner is worth accepting.

11. We, therefore, allow the prayer of the petitioner to file a representation accordingly within a period of three weeks from today and direct the Respondent No. 2 to decide the representation of the petitioner by a reasoned and speaking order in accordance with law at an earliest possible time, but not later

than 10 weeks of presentation of certified copy of this order alongwith copy of the representation. The decision taken on the representation shall also be communicated to the petitioner soon thereafter. The claim petition is disposed of accordingly. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: APRIL 10, 2018
NAINITAL

KNP