

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 42/DB/2019

Chandra Prakash Chaudhary s/o Late Sri D.D. Chaudhary, aged about 59 years, at present working and posted on the post of Chief Administrative Officer, in the office of Additional Director (Livestock), Animal Husbandry, Uttarakhand, Gopeshwar, District Chamoli.

.....Petitioner

vs.

1. Secretary , Animal Husbandry, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director, Directorate, Animal Husbandry, Uttarakhand, Mothorowala, Dehradun.
3. Additional Director, Department of Animal Husbandry, (Livestock Development) Gopeshwar, District Chamoli.

.....Respondents.

Present: Sri L.K.Maithani, Counsel for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 27, 2019

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks following reliefs:

“ (i) To quash the impugned order dated 19.07.2017 (Annexure: A-1) and order dated 11.12.2018 (Annexure : A-2) passed by the respondent no.2 and impugned recovery order dated 1/7.02.2019 (Annexure: A-3) passed by respondent no.3 along with effect and operation declaring the same as non-est in the eyes of law.

- (ii) To issue an order or direction to the respondent no.2 to restore the promotion order dated 28.07.2009 of petitioner to the post of Administrative Officer along with all consequential benefits.
- (iii) To issue an order or direction to the concerned respondent to restore the benefit increments granted to the petitioner on completion of eight & fourteen years' service on the post under the scheme of Timescale-Pay scale.
- (iv) To grant the benefit of pay scale of Rs.1400-2300/- of Senior Assistant to the petitioner w.e.f. 02.12.1995 the date when it was granted to Sri Gunanand Arya the junior person to the petitioner along with all benefits.
- (v) To issue an order or direction to the concerned respondents to grant all the service benefits including the benefit of seventh pay scale which were denied/stopped due to adverse entry of the year 2005-06.
- (vi) To issue any other order or direction which this Court may deem fit and proper in the circumstances of the case in favour of the petitioner.”

2. Facts, giving rise to present claim petition, are as follows:

The petitioner was initially appointed on the post of Junior Clerk-cum- Typist in the Head Office (Directorate) under the Additional Director, Animal Husbandry (Hills), Gopeshwar, Chamoli, in the year 1987. Subsequently, respondent department, ignoring the seniority and eligibility of the petitioner, promoted one Sri M.P.Nauniyal, who was junior to the petitioner, on the post of Senior Clerk. Petitioner made several representations, but instead of promoting him, he was transferred from Directorate Cadre to the subordinate office, in utter disregard of the Rules. Thereafter, respondent department also granted promotion to other junior persons, namely, Sri R.K.Pandey and Sri Gunanand Arya, which was challenged before Public Services Tribunal, Lucknow, in Claim Petition No. 936/1995. Petitioner's claim petition was allowed *vide* judgment dated 28.09.1995, directing the respondent department to promote the petitioner to the post of Senior Clerk *w.e.f.* 04.12.1992, when his junior Sri M.P.Nauniyal was promoted. The Tribunal also directed the respondent department to prepare and publish a gradation list of all the employees of the Ministerial Staff. Respondent department *vide* order dated 23.12.1995, promoted the petitioner to the post of Senior Clerk in the pay scale of Rs.1200-2400/- *w.e.f.* 04.12.1992, which was later on revised and promotion was given to the petitioner since 04.12.1990. The petitioner was promoted to the post of

Senior Assistant in the pay scale of Rs.1350-2200/- *w.e.f.* 01.01.1993 *vide* office order dated 16.12.1996. Sri Gunanand Arya , who was junior to the petitioner, was promoted as Senior Assistant in the higher pay scale of Rs.1400-2300/- instead of pay scale of Rs. 1350-2200/- since 02.12.1995. The then State of U.P., *vide* G.O. dated 02.12.2000 framed the scheme of Time Pay Scale for its employees, which was made applicable to the employees of the State of Uttarakhand *vide* G.O. dated 12.03.2001.

Since the petitioner approached the Court for redressal of his grievances regarding seniority and promotion, the respondents got annoyed and granted an adverse entry for the year 2005-06 to the petitioner. The petitioner gave several representations, but to no avail. It has been provided in Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 (for short, Rules of 2002), that if the authority fail to decide the representation of the applicant within stipulated time, then such adverse entry shall not bar service avenues of the employees. The representation of the petitioner was decided after a lapse of more than 2 & ½ years *vide* order dated 12.06.2009. Respondent No.3 expunged the adverse entry of the petitioner (Copy Annexure: A-10).

After expunction of the adverse entry, Respondent No.3, *vide* office order dated 28.07.2009 granted promotion to the petitioner from the post of Head Assistant to the post of Administrative Officer- Grade I, on which the petitioner joined on 01.08.2009. Further, *vide* office order dated 31.10.2015, Respondent No.2 promoted the petitioner on the post of Senior Administrative Officer, on which the petitioner gave joining on 31.10.2015. Still further, *vide* office order dated 17.12.2016, Respondent No.2 granted promotion to the petitioner on the post of Chief Administrative Officer, which was initially stayed, but subsequently revoked by Respondent No.2. Petitioner gave his joining on the post of Chief Administrative Officer on 21.07.2017. Suddenly, Respondent No.2, *vide* office order dated 19.07.2017 (Annexure: A-1) cancelled the promotion order dated 28.07.2009, in the backdrop of a Government Order dated 08.07.2009, in which there is a provision that if

ACR and integrity of any person is doubtful for a particular year, such person shall not be eligible for promotion for a period of 5 years. After cancelling the promotion order dated 28.07.2009, Respondent No.2 reviewed the promotion of the petitioner to the post of Administrative Officer from 01.04.2011, instead of 28.07.2009. Representation was filed by the petitioner. Respondent No.2, *vide* second impugned order dated 11.12.2018, re-fixed the pay of the petitioner and directed Respondent No.3 to recover the excess amount. Respondent No.3, *vide* order dated 1/7.02.2019, recovered a sum of Rs.2,92,000/- from the petitioner. Feeling aggrieved with the same and having no other efficacious remedy, petitioner was left with no other option but to file present claim petition.

3. Respondents/ State have contested the claim petition by filing written statement asserting that the petitioner is not entitled to the relief claimed in present claim petition. Although the claim petition was contested on several factual and legal grounds, the main ground, which this Tribunal considers most appropriate to deal in this judgment is , Para 10 of the Counter Affidavit filed by Dr. Ashok Kumar, Additional Director, Livestock Department/ Animal Husbandry Department, Gopeshwar, Chamoli, which reads as below:

“That it is also important to mention here that against the adverse entry for the year 2005-06 the petitioner furnished a representation under Rule 5 of the Rules of 2002 to the Respondent No.3, on which the ample opportunity of hearing was afforded to the petitioner and the adverse entry awarded to the petitioner was expunged (Annexure: A-10) to the claim petition further it is made clear that doubtful integrity as awarded to the petitioner remained as it is in effect up to the year 2011.”

4. Rejoinder affidavit was filed by the petitioner reasserting his claim.
5. Admission of the claim petition was subject to limitation, which issue was left open to be decided at the time of final hearing.
6. Petitioner has made prayer for various reliefs including direction to Respondent No.2 to restore the promotion order dated 28.07.2009 of the petitioner to the post of Administrative Officer & grant benefit of pay scale of Senior Assistant *w.e.f.* 02.12.1995, the date when his junior Sri Gunanand Arya was granted the same along with all the benefits.

7. *Vide* Annexure: A-1 dated 19.07.2017, the promotion order of the petitioner was cancelled and his promotion to the post of Administrative Officer, Grade-I was rescheduled. To elaborate, he was promoted to the post of Administrative Officer, Grade-I *vide* order dated 28.07.2009. *Vide* Annexure: A-1 dated 19.07.2017, he was promoted to the post of Administrative Officer w.e.f. 01.04.2011 (instead of 28.07.2009). He was promoted to the post of Senior Administrative Officer w.e.f. 31.10.2015 and on the post of Chief Administrative Officer w.e.f. 17.12.2016.
8. Annexure: A-1 was issued on the premise that since the integrity of the petitioner was withheld, therefore, he will not be eligible for promotion for next five years.
9. In Annual Confidential Remarks(ACR) of the petitioner for the year 2005-06 (Copy: Annexure- A-8), integrity of the petitioner was withheld *vide* order dated 30.08.2006. Such ACRs were made purportedly on the basis of indictment by Hon'ble High Court (which was not so), although adverse comments were passed against him. Hon'ble High Court, in its order dated 26.07.2004 in W.P. SS No.4551/2001 has nowhere directed that the adverse entry be given to the petitioner, although in para 9 of the aforesaid judgment, Hon'ble High Court has said that "the language and contents of the letter itself create doubt about the veracity of the contents of the letter. A retired public servant will not indulge in a dispute of the seniority of staff members by mentioning the words like 'this is highly discriminatory' in law.....in view of these documents also the seniority list relied upon by the petitioner appears to be a false one.....Genuineness of this document (Annexure:9 to RA), is again doubtful. The petitioner has not explained on his RA from where he obtained copy of this letter and with whose authority. The alleged endorsement of the retired Joint Director, made on the back of this letter, creates more doubt about the letter being issued by the Addl. Director."
10. It is the submission of Ld. Counsel for the petitioner that the impugned order dated 19.07.2017 whereby the promotion order dated 28.07.2009 of the petitioner was cancelled and his promotion on the post

of Administrative Officer since 01.04.2011 was reviewed, is patently bad in the eyes of law. The main thrust of petitioner's contention is that the adverse entry of the petitioner for the year 2005-06 was expunged by Respondent No.3 *vide* order dated 12.06.2009. Petitioner's argument is that he made his representation against adverse entry of the year 2005-06 well in time. Such representation was decided in favour of the petitioner, although belatedly. In Rule 5 of the Rules of 2002, it is provided that any adverse entry which is not communicated or decided as per Rule 4, (the said entry) cannot be read against the concerned employee.

11. The controversy, therefore, boils down to the question as to whether the adverse entry of the petitioner was expunged or not? Whereas Ld. Counsel for the petitioner would argue that such entry has been expunged, Ld. A.P.O. would counter argue that although the adverse entry has been expunged, but the integrity of the petitioner for the year 2005-06 still remains withheld. According to Ld. A.P.O., the same has not been interfered by the departmental authority, who decided the representation of the petitioner. According to Ld. A.P.O., the adverse entry for the year 2005-06 is in two parts. The first part has been expunged by the authority deciding the representation of the petitioner, but the second part withholding the integrity of the petitioner remains as it is and once the integrity of any employee for a particular period has been withheld or not certified, the same has its adverse consequences for a period of five years from the year when the integrity of an employee was withheld. It is, therefore, the contention of Ld. A.P.O. that the promotion order granted to the petitioner was revisited considering the fact that his integrity was withheld.
12. In the backdrop of aforesaid submissions, this Tribunal is duty bound to decide one main question, which is, whether the adverse entry of the petitioner, along with withholding his integrity, has been expunged or whether it is only in piecemeal, as has been argued by Ld. A.P.O.?
13. It is not very difficult for us to decide the aforesaid question. Relevant documents would reveal that the entire adverse entry for the year 2005-06 has been expunged by Respondent No.3. In other words,

the said authority has expunged the entire adverse entry, without reservation of keeping such part of the adverse entry intact which pertains to withholding of integrity. If only part of the representation was allowed by Respondent No.3, the same should have been reflected in his order. Such authority has not stated anywhere that whereas the first part of the adverse entry eclipses, the second part which deals with withholding of integrity of the petitioner, remains intact.

14. It, therefore, follows that the adverse entry dated 30.08.2006 (Annexure: A 8) given to the petitioner by Deputy Director, Animal Husbandry, Gopeshwar, was expunged by Additional Director *vide* order dated 12.06.2009 (Annexure: A 10).
15. To recapitulate, it is the submission of Ld. A.P.O. that although adverse entry awarded to the petitioner was expunged, but doubtful integrity, as awarded to the petitioner remained as it is, whose effect was up to the year 2011. Ld. A.P.O. has submitted so on the strength of Para 10 of the C.A. of Dr. Ashok Kumar, Additional Director, Livestock/Animal Husbandry Department, Gopeshwar.
16. To sum up, this Tribunal is unable to subscribe to the submission of Ld. A.P.O. that although adverse entry awarded to the petitioner has been expunged but the doubtful integrity, as awarded to the petitioner remained as it is. This is not correct as the integrity clause is an integral part of the text of the entry. In fact, the entire order has been expunged *vide* order dated 12.06.2009 by Addl. Director, Animal Husbandry Department, Gopeshwar (Annexure: A-10).
17. Such an inference has prompted us to decide the issue in favour of the petitioner.
18. This Tribunal has, although gone through and considered other documents on record, but does not feel it necessary to deal with each and every paper, for, the other papers have become inconsequential in view of the finding that the entire adverse entry for the year 2005-06 has been expunged by Respondent No.3, which contention is the backbone of respondents' case.

19. Annexure: A-1 is, therefore, liable to be set aside. Promotion of the petitioner *w.e.f.* 28.06.2009 was cancelled on 19.07.2017 (Annexure: A 1). His pay was re-fixed on the basis of Annexure: A 1, *vide* order dated 11.12.2018 (Annexure: A-2). Excess amount was directed to be realized from him *vide* order dated 1/7.02.2019 (Annexure: A-3). These are consequential orders and, therefore, there is an explanation for filing the claim petition little beyond the period of limitation. However the relief demanded by him, like benefit of pay scale of Rs.1400-2300/- of Senior Assistant when it was granted to his junior and all other reliefs not linked to the expunction of the adverse entry of 2005-06 are definitely time barred and cannot be granted on the basis of this claim petition.
20. Once the order dated 19.07.2017 is set aside, consequential benefits should follow. Therefore, the issue of limitation which was left open to be decided at the time of final hearing, is decided in the manner that since the issue of limitation, in the instant case, is a mixed question of law and fact and considering the peculiar facts of the case coupled with sufficiency of reasons thus furnished in support thereof, technical delay, if any, in filing the claim petition is condoned, in the interest of justice.
21. The claim petition partly succeeds and is partly allowed. Orders impugned dated 19.07.2017, 11.12.2018 and 1/7.02.2019 (Annexures A-1, A-2 & A-3) are hereby set aside and Respondent No. 2 is directed to restore the promotion order dated 28.07.2009 of petitioner to the post of Administrative Officer along with all consequential promotions as granted to him earlier and related service benefits. The claim petition in respect of other reliefs is dismissed, as time barred. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 27, 2019
DEHRADUN

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