

**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. 43/DB/2019

Rajendra Kumar Sharma, s/o Sri Jagdish Prasad Sharma, aged about 53 years, Senior Assistant, District Employment Ofoffice, District HaridWar, Uttarakhand, r/o House No. 2, Type-3, Govt. ITI Campus, Jagjeetpur, Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Employment, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director Department of Employment, ITI Campus, Rampur Road, Haldwani, District Nainital.
3. District Employment Officer, District Haridwar, Uttarakhand.

...Respondents.

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

JUDGMENT

DATED: May 05, 2020

Justice U.C.Dhyani, Chairman
Rajeev Gupta, Vice Chairman(A)

By means of present claim petition, the petitioner seeks to direct the respondents to consider and promote the petitioner on the post of Administrative Officer(AO) w.e.f. 08.10.2013 on the post of Senior Administrative Officer(SAO) w.e.f. 19.07.2016; and on the post of Chief Administrative Officer

(CAO) *w.e.f.* 26.05.2017; the dates when petitioner's juniors were granted promotion, with all consequential benefits.

Petitioner also seeks to direct the respondents to expunge the adverse entries of the years 1996-97 and 2001-02.

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

The petitioner was initially appointed as Junior Assistant in the respondent department on 16.01.1988. At present, he is working as Senior Assistant with Respondent No.3. In the year 1996-97, an adverse entry was awarded to the petitioner. Petitioner has taken a plea, in the claim petition, that the said entry was never communicated to him and, therefore, (the same) could not be read against the petitioner in view of UP Government Servants (Disposal of Representation Against The Adverse Annual Confidential Report and Allied Matters) Rules, 1995. Again, in the year 2002, on the basis of inquiry, an adverse entry was awarded to the petitioner. A plea has been taken in the claim petition that no notice or charge sheet was ever served upon him. When he knew about the same, he made a representation to the respondent in September-October, 2002 and again in February-March, 2003, which were forwarded by Respondent No.3 to Regional Employment Officer. No decision was taken on the representation of the petitioner. Third reminder was again given by the petitioner. The same was also forwarded, but to no avail.

According to the petitioner, as averred in the claim petition, the Uttarakhand Government Servants (Disposal of Representation Against The Adverse Annual Confidential Report and Allied Matters) Rules, 2002 (for short, Rules of 2002) (hereinafter referred to as the Rules) provide that the adverse entry should be communicated to the employee within 90 days. Rule 4(2) provides that the employee is entitled to make a representation within 45 days. The competent authority will send for the comments of the authority which recorded the adverse entry. The petitioner has quoted the provisions in para 4(v) of the claim petition to plead that, in the circumstances, the adverse report would not come in the way of promotion of the delinquent employee. *Vide* order dated 17.04.2004 of Respondent No.1, seniority list of Ministerial Cadre was issued. The petitioner was placed at Sl. No. 118. The persons placed at Sl. No. 119, 120, 122, 124 and 138 to 141 are junior to the petitioner. After the

seniority list was issued, promotions were made for the post of Senior Assistants. The juniors to the petitioner were given promotion. Name of the petitioner was not considered for promotion because of un-communicated adverse entry. Denial of promotion to the petitioner by Departmental Promotion Committees was wrong, as per the petitioner. The petitioner has also quoted various Rules, in the petition, to plead that he was fully eligible for promotion to the post of Senior Assistant, when his juniors were granted promotion. He was also denied promotion to the post of Administrative Officer, Senior Administrative Officer and Chief Administrative Officer subsequently.

Faced with no other alternative, petitioner has filed present claim petition.

3. W.S./C.A. has been filed on behalf of respondents. Affidavit of Sri Uttam Kumar, District Employment Officer, Haridwar has been filed. It has been pleaded in Para 4 of the C.A. that the petitioner has challenged the promotion of Sri Devendra Singh Rawat and others on the post of Administrative Officer *w.e.f.* 08.10.2013 and thereafter, on the post of Senior Administrative Officer *w.e.f.* 19.07.2016 and further, on the post of Chief Administrative Officer *w.e.f.* 26.05.2017, without impleading them as necessary parties. It has also been averred, in the W.S., that the adverse entry for the year 2001-02 was duly communicated to the petitioner, as has been enclosed with the C.A. History of the case has been traced in para 5 of the W.S. to plead that the petitioner is not entitled to any relief. Further, it has also been averred that the claim petition is barred by time, in as much as Section 5(1) (b) (i) of the U.P. Public Services (Tribunal) Act, 1976 provides for filing reference within one year. The delay, according to W.S., caused by the petitioner is deliberate, intentional and without sufficient cause. At one point of time, the petitioner had forgone his promotion (para 1). The petitioner became junior to his juniors after their promotion in the year 2006. The claim petition is devoid of merits and should be dismissed.

4. Rejoinder Affidavit has also been filed by the petitioner reasserting the facts contained in the claim petition.

5. The respondents have not denied the petitioner's contention that the adverse entry of the year 1996-97 was never communicated to the petitioner, therefore, this entry should not be read against the petitioner in view of the Rules. Respondents have stated, in the C.A./W.S., that adverse entry awarded in the year 2001-2002 was a special adverse entry on the basis of a disciplinary inquiry. Annexure: CA-1, filed with C.A./W.S. is a letter dated 26.07.2002, from Director, Training and Employment to the District Employment Officer, Haridwar, which (letter) states that the Regional Employment Officer, Lansdwone, as inquiry officer, has recommended adverse entry to certain employees, including the petitioner, which has been approved by the Director, Training & Employment. The adverse entry recorded by the District Employment Officer, Haridwar, also mentions this letter from Directorate, stating that the adverse entry is being recorded on the instructions given in this letter. The District Employment Officer has then communicated this to the petitioner giving him an opportunity of submitting his representation against the same, so that the same may be sent to the competent officer. The petitioner submitted his representation and also gave reminders but no decision on his representation has been taken.

6. **This Tribunal wanted to know from Ld. A.P.O., representing the respondents, whether show cause notice was issued to the petitioner before granting this special adverse entry or not? Respondents have not been able to produce any show cause notice which might have been issued to the petitioner before granting him this special adverse entry, despite best efforts of Ld. A.P.O. It is clear that the above special adverse entry has been given by way of punishment (as a minor punishment), but before inflicting this punishment, an opportunity of show cause was required to be given to the petitioner, which has not been done. The punishment of special adverse entry, thus granted to him, is not legally tenable and is hereby quashed. The disciplinary proceedings should be deemed as still pending, after the stage, preliminary enquiry report was submitted against him to Director, Training & Employment.**

7. This Tribunal also finds that Sri Devendra Singh Rawat and others were not necessary parties, as pleaded by the respondents in para 4 of their C.A./W.S.. Further, in the given circumstances, there seems to be no delay in filing the claim petition but even if there appears some delay, the same

deserves to be condoned considering the sufficiency of reasons culled out on the basis of facts brought on record.

8. In these circumstances, this Tribunal observes that if the respondents want to continue with the disciplinary proceedings, initiated at that time, they may now give a proper show cause notice to the petitioner within a period of two months of the date of this order and after considering his reply to the same, as per Rules, award him suitable minor punishment or exonerate him, soon thereafter. If the petitioner is granted some minor punishment, he shall have the right to appeal against the same, as per relevant Rules.

9. The demand of the petitioner for his promotion from the date his juniors were promoted, be considered by the DPC, without considering the adverse entry 1996-97 (not communicated to the petitioner) and special adverse entry granted in 2001-02, which is hereby struck off and due to the pendency of disciplinary proceedings, result be kept in sealed cover, to be opened after the disciplinary proceedings are over.

10. Order accordingly.

11. The claim petition is, accordingly, disposed of. No order as to costs.

RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 05, 2020
DEHRADUN

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