

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 42/NB/DB/2023

Birender Prasad Sah (Male) Aged about 61 years S/o Late Sri Sunder Lal Sah, R/o Village and Post Kotabagh, Tehsil Kaladhungi, District Nainital.

.....petitioner

VS

1. State of Uttarakhand through Secretary Economics and Statistics, Dehradun.
2. Director, Economics and Statistics, Government of Uttarakhand Dehradun.
3. District Economics and Statistics Officer, Nainital, District Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: APRIL 08, 2025

HON'BLE SRI A.S.RAWAT, VICE CHAIRMAN (A)

Present claim petition has been filed for seeking the following reliefs:

(i) To Issue direction or order or direction suitable in nature and quash the impugned order dated 23-01-2023 and further pass appropriate order or direction, directing the respondents to review the DPC held on 10-03-2016 and consider the case of the petitioner for promotion on the post of Senior Administrative Officer from the date when the juniors to the petitioner were promoted alongwith all consequential benefits treating the entries of the petitioner for the year 2014-15, 2015-16 and 2016-17 as non-existing in accordance with Rules 2015 and judgment of the Hon'ble Apex Court and Hon'ble High Court of Uttarakhand as

mentioned in the body of the claim petition and further revised the pension and other retiral dues along with admissible interest or @18% keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately and to allow the petition in toto

(ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. This is a second round of litigation. Earlier, the petitioner had filed claim petition no. 136/NB/DB/2022, which was disposed of by this Tribunal vide order dated 09.11.2022, with the following directions:

"5. Present claim petition is, accordingly, disposed of, at the admission stage, with the consent of learned Counsel for the parties on the basis of judgments rendered by Hon'ble Apex Court in Dev Dutt vs. Union of India (supra) and Sukhdev Singh vs. Union of India (supra), as below:

The petitioner has sought upgradation of his ACRs for the years 2013-14, 2014-15, 2015-16 and 2017-18. As per the ratio of the judgments of Hon'ble Apex Court in Dev Dutt vs. Union of India (supra) and Sukhdev Singh vs. Union of India (supra), the Tribunal directs that the entries of these years shall be communicated to the petitioner within a period of two months from the date of receipt of certified copy of this order by the respondents. Subsequently, the petitioner may make representations against these entries within a period of two months thereafter and the representations shall be decided within two months of the receipt of the same by the competent authority. If after such decision any of these entries are upgraded, the respondents shall hold a review DPC to consider promotion of the petitioner from the date his juniors were promoted within a period of three months thereafter."

2.1 In compliance of the aforesaid directions, the respondents vide letter no 1879/Stha NB/DB/2022 dated 08-12-2022 communicated the entries for the year of 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 and directed the petitioner to submit his representation against the same. The petitioner thereafter submitted his detailed representation to the respondents on 19-12-2022 and stated that in view of the Rule 5 of Rules of 2015 his case for promotion can be

considered as the entries for the years of 2013-14, 2014-15, 2016-17 and 2017-18 are not communicated to him.

2.2 The respondents have passed impugned order dated 23-10-2023 and rejected the representation of the petitioner and maintained the earlier entries of the A.C.R., which has been challenged in the present claim petition.

2.3 The petitioner was inducted in service as Junior Assistant/ Typist on 10-01-1989 in the pay Scale of Rs. 354-550 on compassionate ground under Dying in Harness Rules in the office of District Statistics Officer, Muzaffarnagar in the erstwhile State of Uttar Pradesh by Director, Economics and Statistics. The service of the petitioner on the post of Junior Assistant was confirmed from 28th April 2003. Since the date of initial appointment, the petitioner has never been charge sheeted and even not a single adverse entry or warning has ever been given to the petitioner.

2.4 The respondents vide order dated 12-10-2004 issued the final seniority list of Chief Assistant, Senior Assistant and Junior Assistant working in the department of the Economic and Statistics, Government of Uttarakhand. In the final seniority list dated 12-10-2004, the name of the petitioner was at serial no. 21.

2.5 On 06.02.2016, Director, Economic and Statistics, Government of Uttarakhand issued an office memorandum whereby a selection committee was constituted under the Chairmanship of Director Economics and Statistics for considering promotion on the post of Chief Administrative Officer and Senior Administrative Officer.

2.6 On 10.03.2016, the meeting of the Selection Committee was held under the chairmanship of the Director Economic and Statistics, Government of Uttarakhand for considering the candidature of the employees for promotion on the post of Senior Administrative Officer from Administrative Officer. The Selection Committee recommended

the names of seven employees for promotion on the post of Senior Administrative Officer on the basis of Seniority.

2.7 On the basis of the recommendation made by the Selection Committee and Statistics, Uttarakhand issued the office Memorandum on 11-03-2016, 01-04-2016 and 18-04-2016, whereby 08 Administrative Officer were promoted on the post of Senior Administrative Officer.

2.8 On 16.05.2016, the petitioner submitted a representation to the Director, Economics and Statistics in respect of promotion on the post of Senior Administrative officer. In the representation, petitioner pointed out that against the 07 sanctioned posts of Senior Administrative Officer in the department, only 06 Senior Administrative Officers are working. Petitioner requested for consideration of his candidature for promotion on the 01 vacant post of senior Administrative Officer. The Representation of the petitioner was forwarded by the District Economic and Statistics officer to the Director vide communication dated 17-05-2016.

2.9 On 20-07-2017, the Director Economics and Statistics issued a impugned communication to the petitioner wherein the petitioner was informed that he has been found unsuitable for promotion on the post of Senior Administrative officer on the ground that in terms of the provisions of Rule 3(3) of the Rules of 2013, the petitioner does not have minimum 04 ACR entries of the category of "Good" or above, in order to be treated as suitable for being considered for promotion on the post of Senior Administrative Officer.

2.10 On 28-07-2017, the Director Economics and Statistics, issued an Office Memorandum whereby three administrative officers, who were junior to the petitioner in the cadre of administrative officer, were promoted on the post of Senior Administrative Officer, on the basis of the recommendation made by the Selection Committee.

2.11 On 24-07-2019, the Director Economics and Statistics issued a impugned communication to the petitioner, wherein the petitioner was informed that he has been found unsuitable for promotion on the post of Senior Administrative Officers on the ground that in terms of the provisions of Rule 3 (3) of the Rules of 2013 the petitioner does not have minimum 04 ACR entries of category of “Good” or above, in order to be treated as suitable for being considered for promotion on the post of Senior Administrative officer.

2.12 On 05-10-2020, the petitioner submitted a representation to the Director, Economics and Statistics against the denial of promotion on the post of Senior Administrative officer. Petitioner pointed out that he has been denied promotion on the ground that the ACR entries of the petitioner of last five years are not categorized as “Good” or above” and hence he has not been found suitable for promotion.

2.13 He has submitted that the ACR entries of the petitioner of the year 2013-14, 2014-15, 2015-16 and 2017-18 which have been categorized as “Satisfactory” and has been the basis of the denial of the promotion to the petitioner on the post of Senior Administrative Officer were never communicated to the petitioner by the competent Authority.

2.14 In Rule 5 of Rules of 2015, it is provided that as per Rule 56 of the Uttar Pradesh Fundamental Rules contained in the Financial Handbook Parts II to IV, any un- communicated adverse entry will not be read as adverse entry against an employee to deny a service benefit.

2.15 It is admitted fact that ‘Satisfactory/Good’ entries are not treated as adverse, but treated them as downgraded. The petitioner’s case for promotion was not considered and while awarding him satisfactory entries, no opportunity of hearing was given to him to enable him to present his cause against the downgraded entries, thus this is also violative to Article 14 and 16 of the Constitution of India and

against the law laid down in the case of **Dev Dutt Vs. Union of India, 2008(8) SCC**, which was also upheld by the full bench of the Apex Court in case of **Sukhdev Singh V/s Union of India and other reported in (2013) (9) Supreme Court Cases 566**.

2.16 The petitioner's case for promotion was not considered due to the average entry in his A.C.R. but while awarding him average entries, no opportunity of hearing was given to him to enable him to present his cause against the downgraded entries, thus this is also violative to Article 14 and 16 of the constitution of India and against the law laid down by the Apex Court in the case of Dev Dutt Vs. Union of India, 2008(8) SCC which was also upheld by the Full bench of the Apex Court in case of Sukhdev Singh V/s Union of India and other reported in (2013)(9) Supreme Court Cases 566 is binding and in view of article 144 of the Constitution of India it is a duty of the respondent authorities to act upon with the aid of the judgment of the Apex Court but they have utterly ignored the said preposition of law and also not followed the dictum of the Apex Court in respect of providing the downgraded entries and all other entries to the petitioner to make a representation against which are still not communicated to the petitioner.

3. The Respondents No 1, 2 & 3 have filed the counter affidavit in the case. The facts in brief are as under:

3.1 याची द्वारा प्रस्तुत याचिका किसी भी प्रकार से सुनवाई हेतु अंगीकृत किये जाने योग्य नहीं है। याची द्वारा उक्त प्रस्तर में माननीय लोक सेवा अधिकरण खण्डपीठ नैनीताल के याचिका संख्या 136/NB/DB/2022 में पारित आदेश दिनांक 09.11.2022 एवं माननीय उच्च न्यायालय उत्तराखण्ड के आदेशों को उद्धृत किया है एवं प्रार्थना की है कि उक्त निर्णयों के आधार पर याचिका स्वीकार की जाये एवं विभाग द्वारा माननीय लोक सेवा अधिकरण खण्डपीठ नैनीताल द्वारा 136/NB/DB/2022 में पारित आदेशों के क्रम में विभाग द्वारा पारित आदेश दिनांक 2236/स्था0/रि0या0-136/NB/DB/2022 दिनांक 23 जनवरी, 2023 को अपास्त किया जाये क्योंकि उक्त आदेश एक अतार्किक आदेश है एवं याची को बिना सुनवाई का अवसर प्रदान किये पारित किया हुआ है। पुनः विभाग के पत्र संख्या 2236/स्था0/रि0या0-136/2022 दिनांक 23 जनवरी, 2023 द्वारा याची के प्रकरण के सम्बन्ध में याची को सूचित एवं अवगत कराया गया था। याची के प्रकरण में विभाग द्वारा उत्तराखण्ड सरकारी सेवक (प्रतिकूल, अच्छा/सन्तोषजनक, उत्तम, अतिउत्तम, उत्कृष्ट

वार्षिक गोपनीय रिपोर्टों का प्रकटीकरण एवं उसके विरुद्ध प्रत्यावेदन और सहबद्ध मामलों का निपटारा), नियमावली 2015 के प्राविधानों के अनुसार सम्बन्धित अधिकारियों की टिप्पणी एवं प्रस्तुत किये गये साक्ष्यों के आधार पर वार्षिक प्रविष्टि के विरुद्ध उनके प्रत्यावेदन को निरस्त कर दिया गया। अतः याचिका निरस्त होने योग्य है।

4. The petitioner has filed Rejoinder Affidavit to the Counter Affidavit of the Respondents denying the contents of the C.A. and has reiterated the averments made in the claim petition. It is further submitted that the respondents have not followed the 2015 Rules while disposing the representation of the petitioner as per the direction of the Hon'ble Tribunal in the earlier petition of the petitioner.

5. We heard Learned Counsel for the parties and perused the documents.

6. Learned Counsel for the petitioner pleaded that the entries in the ACRs for the year 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 have not been communicated to the petitioner due to which he could not get opportunity to defend the adverse entries against him. He has cited the Rule 5 of the Rules of 2015 that his promotion should be considered in accordance of Volume of Financial Hand Book, Volume II, Parts -II to IV as well as the decision the Hon'ble Supreme Court in the matter of Dev Dutt vs. Union of India, 2008(8) SCC. The adverse entries cannot be read against him at the time of promotion. In view of non- communication of the adverse entries, these cannot be used against him at the time of his promotion and he should be promoted. His claim petition is liable to be allowed.

7. Learned A.P.O. pleaded that the petitioner has been informed about the entries after the decision of the Hon'ble Tribunal in the Claim Petition No 136/NB/DB/2022. The Hon'ble Tribunal directed the Respondents to communicate the adverse entries to the petitioner. The petitioner was also directed to submit the representation against the adverse entries and the respondents were directed to dispose of the representation within two months. The representation of the petitioner was disposed of by the respondents and the entries were

kept intact. As the entries in ACRs of the petitioner were not upto the mark good/very good categories, the petitioner did not meet bench mark for the promotion. So, his case was not considered for the promotion. In view of the above the petition is liable to be dismissed.

8. Based on the arguments of Learned Counsels of the parties and the record submitted, we find that respondents have communicated the entries in the ACRs for the year 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 to the petitioner in compliance of the decision of the Hon'ble Tribunal in the Claim Petition No. 136/NB/DB/2022 filed by the petitioner. The petitioner submitted his representation against adverse entries and the respondents disposed of the representation and kept the adverse entries intact. The Hon'ble Tribunal also directed that in case any of these entries in the ACR are upgraded, the respondents were directed to hold review DPC. As the entries of the petitioner were not upgraded, there was no need to hold the review DPC. We hold that the respondents have followed the procedure and there is no need to interfere in the process now. The claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: APRIL 08, 2025
DEHRADUN
KNP