

**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. 24/NB/DB/2024

Omkar Nath Kosta, aged about 63 years, s/o Sri Mool Chandra, Retired Principal, Govt. Polytechnic, Shaktifarm, SIDCUL, Sitargang, District Udham Singh Nagar, presently r/o 65 L.I.G., Chaitanya Vihar, near C.N.G. Makadi Khera, Kanpur, U.P.

..... **Petitioner**

Versus

1. State of Uttarakhand through Secretary, Technical Education Department, Govt. of Uttarakhand, Dehradun.
2. Director, Technical Education, Uttarakhand, NCC Block Campus, Govt. Polytechnic, Srinagar (Garhwal), District Pauri Garhwal, Pin-246174.

..... **Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: MARCH 21, 2025

This claim petition has been filed by the petitioner for following reliefs:

- "A. To set aside the impugned orders dated 07.02.2023 and 05.12.2023 issued by Respondent no. 1 (Annexure No.1 and 2 to Compilation-I).*
- B. To set aside the impugned office memo dated 15.04.2008 issued by Respondent no. 1 in so far as it relates to non-certification of integrity of the petitioner for the year 2003-04 (Annexure No.3 to compilation-I).*
- C. To direct the respondents to grant benefit of First ACP from due date w.e.f. 28.09.2009 as well as Second ACP w.e.f. 28.09.2015.*

- D. To direct the respondents to grant all consequential benefits to the petitioner, including revision of retiral dues, and other service benefits.*
- E. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- F. Award the cost of the Claim Petition in favour of the petitioner."*

2. Brief facts of the case are that-

2.1 The petitioner was initially appointed on the post of Head of Department (Electrical Engineering) by recommendations of U.P. Public Service Commission vide G.O. dated 25.08.1999 and given posting at Govt. Polytechnic, Dehradun. Since no vacancy was available at the relevant time in Government Polytechnic, Dehradun, as such, the posting of the petitioner was amended and he was posted in Government Polytechnic, Narendra Nagar, District Tehri Garhwal vide order dated 23-09-1999. The petitioner joined duties on the post of Head of Department (Electrical Engineering) in Government Polytechnic, Narendra Nagar, District Tehri Garhwal on 28-09-1999 and he remained posted there upto 13-07-2002 and thereafter, transferred to Government Polytechnic, Uttarkashi on the same post.

2.2 The Principal of the Institution as Reporting Officer gave "Bad" Grade for the ACR of 2003-04 and had also not certified integrity of the petitioner. Although the said adverse entry was given by the Principal for the entire year i.e. 01.04.2003 to 31.03.2004, however, the Reviewing Officer, negated/disapproved the said entry given by Reporting Officer and recorded a finding that Sri Kosta discharges his duties with due sincerity and dedication. It was further recorded by Reviewing Officer that the petitioner is also fully suitable for promotion on his turn. It further appears that the Accepting Officer namely the Respondent No. 2 herein, however, without giving any grading either on positive side or on negative side in his endorsement dated 15-06-2004, simply made an endorsement that he is in agreement with the Principal only for the period of 25-09-2003 to 31-03-2004.

2.3 The aforesaid proposed entry was communicated to the petitioner vide letter dated 25-09-2004. The petitioner submitted a representation dated 25-10-2004 against the same. The concerned matters are regulated by the Uttarakhand Government Servants (Disposal of Representations) against Annual Confidential Report and Allied Matters Rules, 2002. In the said Rules, it is also provided that the representation shall be submitted by the employee concerned within fixed time of 45 days, the same shall be decided within 120 days. Since the representation of the petitioner was not decided within the prescribed time limit of 120 days, as such, the said proposed adverse entry also stands nullified on this count.

2.4 The Respondent No. 1 disposed of the said representation vide order dated 15-04-2008. In the said order, the State Government has categorically recorded the finding that the exam result of the student relating to the petitioner was very good for the said year i.e. 2003-04, as such, there was no justification for recommending "Bad Entry". In Para No. 3 of the said order, it has been observed that for certain mentioned reasons, the integrity of the petitioner was not certified. It is settled position in law that integrity of any employee cannot be withheld/not certified for such flimsy reasons and there should be solid material/reasoning for doubting/non certifying integrity of any employee. In the present case, it is not the case of the Respondents that the petitioner's integrity was categorized as "Doubtful", but, in fact it was mentioned that the same is "Non-Certified". Moreover, non-certification of integrity by the concerned Principal was totally on the basis of adverse remarks/Bad Entry and once the Bad Entry stands expunged by the State Government, no further adverse inference can be attributed to the said alleged entry for the year 2003-04.

2.5 As per government order dated 18-12-2003 it is mandatory that either an enquiry or an explanation is required to be sought before withholding the integrity certificate, however, in the present case neither any enquiry was ever held by the Respondents nor any

explanation was ever called from the petitioner for the purpose of withholding the integrity certificate.

2.6 The Respondents' denying benefit of ACP on the alleged ground of entry for the year 2003-04, is totally arbitrary and erroneous and cannot be sustained in the eyes of law. It is admitted fact that after a period of two years of the same, the petitioner was promoted on the post of Principal vide order dated 07-09-2011 by the State Government, after evaluating his part service record as well as his work, performance and after assessing his suitability to discharge duties on the higher post.

2.7 The petitioner was appointed on the post of Head of Department w.e.f. 28-09-1999 and as such he became due for benefit of First ACP in the Grade Pay of Rs. 7600/- w.e.f. 28-09-2009. However, the said benefit was not given to the petitioner. Similarly the petitioner was entitled for grant of benefit of second ACP after 06 years of the date of entitlement of First ACP, i.e. w.e.f. 28-09-2015 in the Grade Pay of Rs. 8700/-. When the Respondents did not take any action in the matter for a considerably long period, the petitioner submitted several representations and lastly, the petitioner again submitted detailed representation on 28-09-2020 in the matter to the Respondent No. 2, but of no avail. Feeling aggrieved, the petitioner approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 335 (S/B) of 2020 (Omkar Nath Kosta vs. State of Uttarakhand and others). The said writ petition was transferred by the Hon'ble High Court to this Hon'ble Tribunal vide order dated 30-08-2022 on the ground of alternative remedy, which was converted into Claim Petition No. 80/NB/DB/2022 (Omkar Nath Kosta vs. State of Uttarakhand and others), which disposed of by this Tribunal vide order dated 07-11-2022 directing the petitioner with a liberty to the petitioner to make a fresh representation against the order dated 15-04-2008.

2.8 Thereafter, the petitioner submitted a detailed and reasoned representation dated 16-12-2022 to the respondent no. 1. The Respondent No. 1 vide impugned office memo dated 07-02-2023,

cursorily rejected the same. In the impugned order, although it has been admitted that the petitioner became due for benefit of First ACP w.e.f. 28-09-2009 on completion of 10 years service and similarly for the benefit of Second ACP w.e.f. 28-09-2015, however, the same could not be given to him due to unsatisfactory service.

2.9 The office memo dated 07-02-2023 was passed by Respondent No. 1, however, the Respondent No. 2 vide letter dated 17-10-2023 requested the Respondent No. 1 to certify the integrity of the petitioner for the period 2003-04. In fact it appears that the Respondent No. 2 finding the claim of the petitioner as genuine one, vide letter dated 17-10-2023 requested for a review in the matter, however, the Respondent No. 1 vide impugned letter dated 05-12-2023, has held that there is no occasion for certifying the integrity of the petitioner for the year 2003-04.

2.10 It is submitted that vide Government letter -761/karmic-1/1993 dated 30.06.1993, the State of U.P. provided that if for one year, the integrity of any individual is not certified and at least for subsequent five years, the integrity is certified, then the services for the said one year shall not be treated as unsatisfactory on account of non-certification of integrity. The said government order is still applicable in the State of Uttarakhand.

2.11 While passing the impugned rejection orders, the Respondent No. 1 could not consider the fact that the petitioner was promoted to the next higher post in Group-1 i.e. Principal, vide Government Order dated 07-09-2011 after considering his entire service record as well as his suitability for the higher post, by the duly constituted Selection Committee.

2.12 Due to non-grant of First ACP w.e.f. due date, the petitioner was further denied the benefit of Second ACP, which is admissible after completing next 06 years of continuous satisfactory service (total 14 years) and the same was due w.e.f. 2015.

2.13 The action of the Respondents in denying the legitimate claims of the petitioner, cannot be countenanced in the eyes of law. The Respondents cannot be permitted to deny legitimate claims of their employees, that too on account of omission and commission on the part of the State Authorities. As such, the action of the Respondents in the matter is totally arbitrary and illegal which cannot be sustained in judicial review.

3. C.A./W.S. has been filed on behalf of the respondents, in which, it has been stated that-

3.1 याची को प्रतिकूल प्रविष्टि दिनांक 16.08.2004 को दी गयी थी। उत्तराखण्ड सरकारी सेवक (प्रतिकूल वार्षिक गोपनीय रिपोर्टों के विरुद्ध प्रत्यावेदन और समयबद्ध मामलों का निपटारा) नियमावली 2002 एवं 2015, जो कि शासनादेश संख्या-155/व(2)/2015-30(39) 2014 दिनांक 28.04.2015 द्वारा प्रख्यापित की गयी है, के प्राविधान के अन्तर्गत याची को 45 दिन के अन्तर्गत उक्त प्रतिकूल प्रविष्टि दिनांक 25.09.2004 का संसूचित कर दी गयी थी। याची का प्रत्यावेदन दिनांक 25.10.2004 को प्राप्त हुआ। उक्त प्रत्यावेदन पर प्रतिवेदक अधिकारी श्री ए० एस० बिष्ट, तत्कालीन प्रधानाचार्य राजकीय पॉलीटेक्निक नैनीताल से आख्या मांगी गयी। प्रतिवेदक अधिकारी द्वारा दिनांक 06.11.2004 को प्रत्यावेदन के प्रत्येक बिन्दु पर अपनी आख्या दी गयी। निदेशालय के पत्र संख्या-2674/न०प्रा०शि०/वा०च०प्र०/2004-05 दिनांक 07.01.2005 द्वारा परीक्षणोपरांत संस्तुति सहित शासन को भेजा।

3.2 शासन के पत्र संख्या-8413/शिक्षा अनुभाग-08/2008-08/08 दिनांक 15.04.2008 द्वारा याची की वार्षिक चरित्र प्रविष्टि को उत्तराखण्ड सरकारी सेवक (प्रतिकूल वार्षिक गोपनीय रिपोर्ट के विरुद्ध प्रत्यावेदन और सहबद्ध मामलों का निपटारा) नियमावली-2002 के प्रावधानों के अनुसार सम्यक विचारोपरांत याची की वर्ष 2003-04 की प्रतिकूल प्रविष्टि विलोपित करतहुए सत्यनिष्ठा अप्रमाणित किये जाने का निर्णय लिया गया।

3.3 उत्तर प्रदेश प्राविधिक शिक्षा राजपत्रित अधिकारी सेवा नियमावली 1990 एवं संशोधित सेवा नियमावली 1998 के प्राविधान के अन्तर्गत मार्च, 2008 में प्रधानाचार्य वेतन बैंड रु० 15600-39100 ग्रेडवेतन रु० 7600 में पदोन्नति हेतु वर्ष 2008 में लोक सेवा आयोग उत्तराखण्ड में योजित डी०पी०सी० में वर्ष 2003-04 की सत्यनिष्ठा अप्रमाणित होने के कारण आयोग द्वारा पदोन्नति हेतु अयोग्य घोषित किया गया।

3.4 शासनादेश संख्या-877/XXVII (7) न०प्रति०/2011 दिनांक 08.03.2011 द्वारा 10, 18. व 26 वर्ष की सेवा पर प्रथम द्वितीय एवं तृतीय वित्तीय स्तरों पर एवं

शासनादेश संख्या-589/ XXVII(7)/40(IX)/2011 दिनांक 01.07.2013 द्वारा 10, 18 एवं 26 के स्थान पर 10, 16, एवं 26 की सेवा पर प्रथम, द्वितीय एवं तृतीय वित्तीय स्तरोंनयन अनुमन्य कराये जाने का प्राविधान किया गया।

3.5 याची को 10 वर्ष की नियमित सेवा निरंतर संतोषजनक रूप से पूर्ण करने पर दिनांक 28.09.2009 को प्रथम वित्तीय स्तरोंनयन देय था, परन्तु वर्ष 2003-04 की सत्यनिष्ठा अप्रमाणित होने के फलस्वरूप पदोन्नति हेतु इन्हें अयोग्य घोषित किये जाने के कारण उसका प्रभाव वित्तीय स्तरोंनयन पर भी पड़ा। दिनांक 07.09.2011 को प्रथम पदोन्नति पर पद भार ग्रहण करने की तिथि से वित्तीय स्तरोंनयन हेतु 10 वर्ष की सेवा कुल 20 वर्ष दिनांक 07.09.2021 को पूर्ण करते हैं, किन्तु याची अधिवर्षता आयु पूर्ण करने पर 31.07.2021 को सेवानिवृत्त हो गये। अतः याची को प्रथम वित्तीय स्तरोंनयन असंतोषजनक सेवा के कारण एवं द्वितीय वित्तीय स्तरोंनयन देय तिथि से पूर्व सेवानिवृत्त होने के कारण नहीं दिये गये हैं।

3.6 याची द्वारा प्रथम एवं द्वितीय वित्तीय स्तरोंनयन दिये जाने हेतु मा० लोक सेवा अधिकरण क्लेम पिटिशन संख्या- 80/NB/DB/2022 ओंकर नाथ कोष्टा बनाम् स्टेट ऑफ उत्तराखण्ड एवं अन्य योजित की गयी। मा० लोक सेवा अधिकरण द्वारा पारित आदेश दिनांक 07.11.2022 के अनुपालन में याची का प्रत्यावेदन दिनांक 16.12.2023 शासनादेश संख्या-141/XLI/23-रिट 01/21 दिनांक 07.02.2023 द्वारा रिस्तारित किया गया, प्रत्यावेदन बलहीन होने के कारण याची की मांग को निरस्त कर दिया गया।

3.7 याची ने वर्ष 2003-04 की सत्यनिष्ठा प्रमाणित किये जाने हेतु पुनः दिनांक 06.03.2023 को प्रत्यावेदन दिया। शासन के पत्र संख्या-1467/XLI-A/2023 रिट-01/2021 दिनांक 05.12.2023 द्वारा याची के प्रकरण में शासन स्तर से पूर्व में लिए गये निर्णय के क्रम में याची की आलोच्य वर्ष 2003-04 की सत्यनिष्ठा प्रमाणित कियेजाने का अवसर नहीं है, का उल्लेख कर प्रत्यावेदन निस्तारित कर दिया गया। याची द्वारा शासन के पत्र दिनांक 07.02.2023 एवं 05.12.2023 को मा० उच्च न्यायालय में चुनौती दी गयी है साथ ही वर्ष 2003-04 की अप्रमाणित सत्यनिष्ठा को नजरअंदाज करने हेतु मा० न्यायालय में याचिका योजित की गयी है।

4. Heard learned Counsel for the petitioner and learned A.P.O. on behalf of the respondents and perused the record.

5. Learned Counsel for the petitioner pleaded that the petitioner has been denied 1st ACP in 2009 and 2nd ACP in 2015 on the basis of non-certification of integrity in the ACR of 2003. He has been

promoted to the post of the Principal in 2011 in which ACR for the entire period have been considered. In a similar case, Sri Sumer Lal Pankaj was promoted, where his integrity was not certified. Petitioner relied upon the Office Memorandum dated 30/6/1993 of Govt. of U.P. regarding determination of satisfactory service and the judgement of Hon'ble Tribunal of Uttarakhand in the claim petition No 119/NB/DB/2021 in the matter of Goverdhan Dumka vs. State of Uttarakhand & Ors.

6. Learned A.P.O. pleaded that ACP has not been granted to the petitioner because the integrity for the year 2003 has not been certified. The petitioner was not given 1st ACP in 2009 as the ACR for the period 1999 to 2009 were taken into consideration while granting 1st ACP and the petitioner was ineligible. However, he was promoted in 2011 as the ACRs for five years were taken into consideration for the promotion and the year of non-certified integrity (year 2003) was not within the range of the eligibility criteria. So, on the basis of the facts mentioned above, the claim petition is liable to be dismissed.

7. Based on the pleadings of the parties and the documents placed, we find that the integrity of the petitioner has not been certified in the year 2003 but the integrity of the subsequent years has been certified. The contention of the Learned Counsel for the petitioner that O.M. dated 30/6/1993 of the Govt. of U.P. is still applicable in the case of the employees in Uttaranchal, is not tenable as the Uttaranchal Government has issued the process to be followed for disposal of matter related to the entries in the ACR, Integrity Certificate, communication of adverse entries, representation against adverse entries and their disposal vide letter No 1712/Karmic-2/2003 dated 18th December 2003.

The Tribunal in the case no. 119/NB/DB//2021 has given the judgment to release the stopped increment of the petitioner as he got integrity certificate in the following year. This ruling is also not applicable in this case.

The issue of withholding of integrity in case of employees of Uttarakhand Govt. has been mentioned in aforesaid letter no. 1712/Karmic-2/2003 dated 18/12/2003. Point no 19 of the letter deals with the issuing the integrity certificate. On perusal of the records we find that the procedure to deal with integrity related matters has not been followed by the respondents as mentioned in the aforesaid letter. The basis of the withholding the integrity are the same remarks which are mentioned as the adverse entry in ACR and those have been expunged in the review by the State Government. So, there is no basis of non-certification of integrity now. In view of the non-observance of the aforesaid of the guidelines and expunging of the adverse remarks in ACR by the respondents, the decision of non-certification of integrity is set aside. The impugned orders dated 07.02.2023 & 05.12.2023 and office memo dated 15.04.2008 are liable to be quashed and the claim petition is liable to be allowed.

Order

The claim petition is hereby allowed. The impugned orders dated 07.02.2023 & 05.12.2023 and office memo dated 15/4/2008 are quashed. The respondents are hereby directed to grant benefit of 1st ACP & 2nd ACP and other consequential benefits to the petitioner accordingly within three months.

A.S.RAWAT
VICE CHARMAN (A)

RAJENDRA SINGH
VICE CHARMAN (J)

DATED: MARCH 21, 2025
NAINITAL

KNP