

**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. 02/DB/2021

Kapil Kumar, aged about 45 years, s/o Sri Jagdish Prasad, at present posted as Executive Engineer, Technical Cell, Kumbh Mela, Haridwar.

.....Petitioners

VS.

1. State of Uttarakhand through Secretary, Irrigation, Dehradun.
2. Engineer-in-Chief, Irrigation Department, State of Uttarakhand, Dehradun.
3. Superintending Engineer, Irrigation, Design Circle, Roorkee, District Haridwar.

.....Respondents.

Present: Sri M.C.Pant, Advocate, for the Petitioner (online).
Sri V.P.Devrani, A.P.O., for the State Respondents

JUDGMENT

DATED: DECEMBER 27, 2021

Justice U.C.Dhyani (Oral)

RELIEFS CLAIMED

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

“(i) to declare the impugned order and all consequential orders as well as action of the reviewing officer as arbitrary, malicious, and void ab-initio, as quash the same along with its effect and operation after calling the entire records keeping in view the facts as highlighted in the body of the petition and also to allow all service

benefits including promotion benefit on the post of S.E. had it been the impugned order was never being in existence.

(ii) To direct the respondents to expunge the ACR for the year of 2018-19, and upgrade the same at par to previous year, along with all consequential benefit had it been the impugned order was never being in existence keeping in view of the facts highlighted in the body of the petition.

(iii) To award damages and compensation from the arraying officers to the petitioner in tune of such amount which the court deem fit and proper in the circumstances of the case against the malafide and malicious act of such persons keeping in view the facts as highlighted in the body of the petition."

PETITIONER'S VERSION

2. Brief facts, giving rise to the present claim petition, are as follows:

2.1 The petitioner, while posted as Executive Engineer (for short 'E.E.') in Roorkee was awarded 'adverse entry' during the year 2018-19, by the then Superintending Engineer (for short 'S.E.'). The S.E. was the Reporting/Reviewing Officer of the petitioner. The adverse entry was given to the petitioner for (alleged) dissatisfactory work, telling lies to the superior officers, writing letters on false facts, violating the orders of the officers, not taking interest in the design work, producing travel invoices by way of unjustified means and withdrawing the same despite the fact that travel was made by private vehicle, remaining out of station on National holidays without permission and not taking participation in the government meetings. The Accepting Authority did not make any endorsement. The adverse entry was communicated to the petitioner *vide* letter dated 19.07.2019 (Copy Annexure: A2).

2.2 The petitioner filed a representation on 17.08.2019 to the Respondent no. 1 and requested for expunging the said adverse entry. A request was also made to upgrade the downgraded entries awarded to him for previous years.

2.3 In his representation dated 17.08.2019 (Annexure: A3), the petitioner replied to each and every imputation, which were the basis of awarding adverse entry to him.

2.4 Petitioner has again submitted replies to the imputations levelled against him in paras 4(iii) to 4(xi) of the claim petition also. The Tribunal does not feel it necessary to reproduce those explanations here, for the sake of brevity.

3. A time frame has been given for making representation(s) against the adverse entries and disposal of representation(s) in the Uttaranchal Government Servants (Disposal of Representation against adverse, fair/satisfactory, good, very good, excellent Annual Confidential Reports and Allied Matters) Rules, 2015.

4. Rule 4 of the aforesaid Rules provides for the competent authority to take decision on the representation. Rule 5 provides that if representation is not decided in accordance with Rule 4 or the adverse entry is not communicated, then the adverse entry cannot be treated adverse for the purposes of promotion and other service benefits.

5. Similarly the aforesaid Rules also provide that, if the employee could not get promotion and subsequently his entries are upgraded, then he shall be entitled to all benefits for promotion as well as notional promotion.

6. Respondent No. 1 passed an order on 15.07.2020 (Annexure: A1), rejecting the representation of the petitioner. It is stated that the representation was decided after prescribed time limit. According to the petitioner, no opportunity was given to the petitioner before passing the impugned order. Petitioner moved a review representation on 04.08.2020 (Annexure: A5), followed by reminder on 31.10.2020 (Annexure: A6), but to no avail. The impugned order is not sustainable in view of various decisions, a reference of which has been given by the petitioner in para 4(xx) of the petition.

7. The petitioner has also challenged the adverse entry on merits also.

COUNTER AFFIDAVIT/ WRITTEN STATEMENT.

8. Counter affidavit and Supplementary Counter Affidavit have been filed on behalf of the respondents. Averments of such C.A.(s) shall be adverted to by the Tribunal, as and when required, during course of the discussion.

DISCUSSION

9. Rules 4 of the Uttaranchal Government Servants (Disposal of Representation against adverse, fair/satisfactory, good, very good, excellent Annual Confidential Reports and Allied Matters) Rules, 2015 (hereinafter referred to as 'the Rules'), provide for the following:

“4. Communication of adverse, fair/ satisfactory, good, very good, excellent report and procedure for disposal of representation--

(1)

(2)

(3)

(4) The competent authority or accepting authority, as the case may be, shall, within a period not exceeding one week from the date of receipt of the representation under sub-rule (2) and (3), transmit the representation to the appropriate authority, who has recorded the adverse, fair/ satisfactory, good, very good report, for his comments, who shall, within a period not exceeding 45 days from the date of receipt of the representation furnish his comments to the competent authority or the accepting authority, as the case may be :

Provided that no such comments shall be required if the appropriate authority has ceased to be in, or has retired from, the Service or is under suspension before sending his comments.

(5) The competent authority or the accepting authority, as the case may be, shall, within a period of 120 days from the date of expiry of 45 days specified in sub-rule (4) consider the representation along with the comments of the appropriate authority, and if no comments have been received without waiting for the comments, and pass speaking orders--

(a) rejecting the representation; or

(b) expunging the adverse report wholly or partly as he considers proper.

(c)

(6).....

(7).....

- (8).....
- (9)
- (10).....
- (11).....

9.1 Learned Counsel for the petitioner submitted, *inter-alia*, that there has been breach of Rule 4 of the Rules, which has been quoted above in para 9 of the judgment.

9.2 Learned A.P.O., on the other hand, submitted with vehemence that there is no breach of any Rule. Learned A.P.O. drew the attention of this Tribunal towards paras 3,4,5,6,7,8,9,10,11,12,13,14, 15 and 16 of the Supplementary Short Counter affidavit on behalf of the respondents to argue that since there is no breach of any rule, therefore, the petitioner is not entitled to the reliefs claimed.

9.3 We respectfully disagree with the submissions of learned A.P.O., principally, on the ground that representation of the petitioner was not decided within stipulated 120+45 days, as provided in Rule 4 (4) of the Rules.

9.4 Take for instance, O.M. dated 15.07.2020 (Annexure; A1). The representation is, undoubtedly, dated 17.08.2019, which was received in the office of Secretary, Irrigation on 09.10.2019. Adding further time of 45 days as per rule 4(4) and 120 days as per Rule 4(5) of the Rules, the representation should have been decided by 22.03.2020. This fact is under no dispute that representation of the petitioner has finally been decided on 15.07.2020 (Annexure: A1). It, therefore, goes without saying that the representation has not been decided within stipulated time.

9.5 Learned A.P.O. further contended that there was strike in Secretariat (from 02.02.2020) and thereafter, nation-wide Lockdown in the Country on account of Covid-19, therefore, the representation could not be decided in time. The delay, according to Ld. A.P.O., in disposing of the representation should be condoned.

9.6. In all humility, the Tribunal is again unable to agree to the submission of learned A.P.O., inasmuch as, the benefit of decision given by

Hon'ble Supreme Court in Suo-Motu Writ Petition No.02/2020, could be given only from 15.03.2020 to a 'justice seeker' and not to a 'justice giver'. Anybody who was prevented to file suit, appeal, representation etc. was eligible to get extended time, beyond limitation, whether condonable or not, but not the authority to whom such application or representation was given. In other words, the petitioner could have claimed condonation of delay in filing representation, but not the authority who was bound to decide the representation etc. within the time frame, as stipulated in the Rules.

9.7 Learned A.P.O. has also argued that the representation was not maintainable inasmuch as the same was not addressed to the Principal Secretary/Secretary, Irrigation, Govt. of Uttarakhand. This argument is also not acceptable in view of the fact that the Secretary, Irrigation Department has decided the representation on its own on merits, although beyond time, and has not disposed of the representation, 'as not maintainable'. The representation was not rejected on the stated ground that the same was not addressed to him.

9.8 In any case, this Tribunal has no hesitation in holding that there has been breach of Rule 4 of the Rules in deciding the claim petition.

9.9 The consequence of non-compliance has been given in Rule 5 of the Rules, as below:

"5. Report not to be treated adverse--Except as provided in Rule 56 of the Uttar Pradesh Fundamental Rules contained in Financial Hand-book, Volume-II, Parts-II to IV, where an adverse report is not communicated or a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purposes of promotion and other service matters of the Government Servant concerned."

[Emphasis supplied]

INFERENCE

10. The consequence would, therefore, be that the adverse report which has been communicated to the petitioner on 19.07.2019 (Annexure:

A2) shall not be treated adverse for the purposes of promotion and other service matters of the petitioner.

10.1. The claim petition, therefore, can be safely decided in terms of Rule 5 of the Rules.

ORDER

11. The claim petition is disposed of by directing that since the representation against the adverse entry, which was communicated to the petitioner *vide* letter dated 19.07.2019 (Annexure: A2) was not disposed of within stipulated time, as given in the Rules, therefore, such report shall not be treated adverse for the purposes of promotion and other service matters of the petitioner.

12. In the circumstances, there shall be no order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: DECEMBER 27, 2021
DEHRADUN.

KNP