

**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. 110/SB/2019

Roop Chandra Lakhera, aged about 53 years, s/o late Sri Goverdhan Prasad Lakhera, presently serving as Lecturer, Chemistry, Government Inter College, Kotdidhang, District Pauri Garhwal.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, School Education, Government of Uttarakhand, Dehradun.
2. Director General, School Education, Government of Uttarakhand, Dehradun.
3. State Project Director, Samagra Shiksha Abhiyan, Uttarakhand, Dehradun, previously known as Rashtriya Madhymik Shiksha Abhiyan.
4. Director, Secondary Education, Uttarakhand, Dehradun.

..... Respondents

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

Judgement

Dated: 04th May, 2023

Justice U.C. Dhyani (Oral)

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

"(i) To quash impugned order dated the 04.04.2013 passed by the respondent No. 3 (Annexure No. A-1), impugned order dated 14.03.2017 and 19.01.2019 (Annexure No. A-2 and A-3) passed by the respondent No. 2 along with the show cause notice dated 14.12.2012 with its operation and effect.

(ii) To issue an order or direction to the concerned respondent to delete the endorsement of adverse entry from the service records of the petitioner.

(iii) To issue any other order or direction which this court may deem fit and proper in the circumstances of case in favour of the petitioner.

(iv) To award the cost of petition."

2. Against the impugned orders, the petitioner preferred writ petition no. 1050 of 2019 (SS) before the Hon'ble High Court of Uttarakhand. The writ petition was dismissed *vide* order dated 08.05.2019 on the ground of alternate remedy. The petitioner has, therefore, filed present claim petition on 11.09.2019 for the aforesaid reliefs. The claim petition was admitted on the self same date. The issue of limitation was left open.

3. Petitioner was posted as Lecturer, Chemistry in district Pauri Garhwal. He was sent on deputation as District Resource Person (Academic) under *Rashtriya Madhyamik Shiksha Abhiyan* (RMSA) and was posted in the office of District Project Officer, RMSA, where he joined on 02.12.2010. The petitioner was repatriated to his parent department *vide* order dated 31.08.2012 stating that the services of the petitioner as District Resource Person (Academic) are not required. He came to know that on some complaint, Joint State Project Director made inspection of the G.I.C., Kandakhal and G.I.C., Adharyakhal, Pauri Garhwal and it was found that regarding purchase of lab equipment for these colleges, the principals of those schools did not follow the directions of State Project Office, RMSA. The principals informed the Joint State Project Director that the purchase was made on the directions of the petitioner. The petitioner again moved application under R.T.I., which revealed that the principals of those schools

purchased the articles on the basis of requirement and the proposal of the School Management Development Committee and for the purchase, the directions issued by RMSA were duly communicated by the District Project Officer.

3.1 When the petitioner was repatriated to his parent department, State Project Director, RMSA, issued a show cause notice dated 14.12.2012 to the petitioner regarding the purchase the lab equipment for G.I.C., Kandakhal and G.I.C., Adharyakhal, Pauri Garhwal. Petitioner submitted his explanation. According to the petitioner, without considering the explanation dated 29.12.2012, the State Project Director, RMSA, *vide* order dated 04.04.2013 (copy Annexure: A1) punished him by awarding an adverse entry to him.

3.2 It is the submission of learned Counsel for the petitioner that on 14.12.2012, the petitioner was neither on deputation nor the Joint State Project Director, RMSA was the appointing authority or the disciplinary authority of the petitioner, hence, issuance of the show cause to the petitioner by Joint State Project Director, RMSA, was illegal. According to learned Counsel for the petitioner, Joint State Project Director, RMSA, was not the competent authority to either issue show cause notice or initiate disciplinary proceedings against the petitioner.

3.3 The adverse entry was given to the petitioner on the basis of allegations of misconduct. The punishments which may be imposed upon a Govt. servant are given in Rule 3 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010). Adverse entry has not been prescribed either as major and minor penalty in Rule 3 of the aforesaid Rules.

3.4 Learned Counsel for the petitioner submitted that it is settled law that the punishment, which is not prescribed in the Rules cannot be given to an employee in the departmental

proceedings. Hence, awarding the adverse entry to the petitioner as punishment cannot sustain in the eyes of law and is liable to be set aside.

3.5 Learned Counsel for the petitioner also submitted that awarding punishment of adverse entry is also bad because State Project Director, RMSA, is not the competent officer to pass the impugned order against the petitioner.

3.6 Petitioner moved a representation on 30.05.2013 before District Project Officer, RMSA, Pauri. No action was taken on the same. The petitioner moved a detailed representation (appeal) before the Secretary, School Education, Govt. of Uttarakhand on 12.08.2013. Secretary, School Education, did not take any action in the matter and therefore, the petitioner moved various representations to State Project Director, RMSA. State Project Director, RMSA, *vide* letter dated 03.07.2015 provided opportunity of personal hearing to the petitioner on 13.07.2015. Petitioner submitted his version and produced evidence in support of his case. An order was issued by State Project Director, RMSA, on 14.07.2015., in which it was mentioned that the decision now would be taken by the Secretary, Secondary Education, Uttarakhand. Then the petitioner moved representation to the Secretary, Secondary Education on 14.07.2015. Petitioner already submitted his appeal/ representation before respondent no. 1 on 12.08.2013, which was pending but after the order dated 14.07.2015 of State Project Director, RMSA, petitioner again moved representation to respondent no. 1 on 21.09.2015.

3.7 Secretary, School Education, called the report from State Project Director, RMSA, *vide* letter dated 19.10.2015, who submitted his report on 09.02.2016 to the Secretary, School Education, who *vide* order dated 29.04.2016 directed Director General, School Education, to take decision in the matter (copy Annexure: A17). Pursuant to the order dated 29.04.2016 of the

Secretary, School Education, petitioner moved a detailed representation to Director General, School Education, on 07.05.2016. Although, Secretary, School Education, specifically directed Director General, School Education, to decide the representation of the petitioner but the Director General, School Education, ignoring the said direction rejected the representation of the petitioner *vide* order dated 14.03.2017 (copy Annexure: A2), stating that the petitioner has moved the representation against the adverse entry at a belated stage.

3.8 Being aggrieved against the order dated 14.03.2017, the petitioner, again, moved representation on 12.04.2017 to the Secretary, Secondary Education, Govt. Uttarakhand, requesting him to expunge the adverse entry. No action was taken on the above representation. Petitioner moved a reminder on 01.01.2018.

3.9 Respondent No. 1, *vide* order dated 23.07.2018 directed the Director, Secondary Education, to expunge the adverse entry dated 04.04.2013 and to take further action in the matter (copy Annexure: A21).

3.10 Director, Secondary Education, instead of taking decision as per order dated 23.07.2018 of respondent no. 1, forwarded the same to State Project Director, RMSA, *vide* letter dated 18.08.2018. Director General, School Education, was also holding the post of State Project Director, RMSA, and *vide* order dated 19.01.2019 (copy Annexure: A3), Director General, School Education, rejected the representation of the petitioner on the ground of delay in the same manner, in which it was rejected earlier *vide* order dated 14.03.2017.

4. It is the submission of learned Counsel for the petitioner that under Rule 4(1) of the Uttarakhand Government Servant (Disposal of Representation against Adverse Annual Confidential Reports and Allied Matters) Rules, 2002 (as amended in 2015) (hereinafter referred to as 'Rules of 2002'), the adverse entry

should be communicated to the employee within 90 days and Rule 4(2) provided that the employee against whom adverse entry has been recorded is entitled to make a representation to the authority one rank above the accepting authority within 45 days. Sub-Rule (3) provided that the competent authority after receiving the representation of the employee under Sub-Rule (2) should send it for comments to the authority which recorded the adverse entry within 7 days. Sub-Rule (3) further provided that the authority who recorded the adverse entry should have sent its report within 45 days to the competent authority. Sub-Rule (4) provided that the competent authority shall decide the representation of the petitioner of the employee against the adverse entry within 120 days from the date of expiry of 45 days provided for submitting the report by the authority who recorded the adverse entry. Sub-Rule (5) provided that if the competent authority has failed to decide the representation within 120 days or the total time specified in the Rules due to administrative reasons then he shall report the matter to the higher authority and the higher authority is entitled to fix the time period for disposal of the representation.

4.1 Rule 5 of the Rules of 2002 provides that if the competent authority failed to decide the representation of the employee within the time specified in Rule 4 then the adverse report should not be treated as adverse and the same would not come in the way for the purposes of any matter such as promotion, A.C.P. etc. inasmuch as the same would not be treated as adverse.

5. Learned Counsel for the petitioner submitted that there is clear violation of all these rules and the order impugned should be set aside. Grounds for challenge to the impugned orders have separately been mentioned in the claim petition.

6. Learned A.P.O. defended the departmental action with vehemence. He submitted that there is nothing wrong with the

orders impugned. Relying upon the contents of C.A./ W.S., which has been filed by the State Project Director, *Samagra Shiksha Abhiyan*, learned A.P.O. argued that the H.O.D. has right to mark the ACR of the employee on the basis of the evaluation of his work. State Project Director is the accepting authority for District Resource Person as per the G.O. The grounds in support of his averments, as taken by the petitioner, are not legally tenable and sustainable in the eyes of law. Learned A.P.O. further submitted that the petitioner has rightly been penalized with adverse entry as per Rules, which adverse entry is not liable to be expunged. Learned A.P.O. also submitted that the petition has been filed on the basis of false facts and therefore, the same is liable to be dismissed with exemplary costs.

7. Documents have been filed in support of the counter affidavit. Rejoinder affidavit thereto has been filed by the petitioner reiterating the facts contained in the claim petition with documents in support thereof.

8. It is a fact that adverse entry has nowhere been prescribed as punishment in Rule 3 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010).

9. A perusal of Annexure: A1 would reveal that the office memorandum dated 04.04.2013 was issued by State Project Director, RMSA. The complaint was that the furniture were purchased by the schools beyond the prescribed limit issued by RMSA. Principals of the schools apprised State Project Director, RMSA, that instructions to purchase furniture with laboratory equipment were given by the petitioner. Preliminary enquiry was got conducted by RMSA office. Petitioner submitted his explanation. *Prima facie*, it was found that there was carelessness on the part of the petitioner. Adverse entry was, therefore, given to

the petitioner for the period under which he remained on deputation with RMSA.

10. As per Annexure: A1, show cause notice was issued to the petitioner. He replied to the same and adverse entry was given to him as punishment, which is nowhere mentioned in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010).

11. The petitioner was on deputation. State Project Director, RMSA, gave him adverse entry. His appointing authority was Director, School Education. The punishment was given to him when he was repatriated to his parent department. A perusal of the documents, which have been referred to above, would reveal that the representation of the petitioner was rejected on the ground of delay. His representation was also decided late *vide* order dated 14.03.2017 (copy Annexure: A2) whereas in fact, he moved the representation within time.

12. One of the most important documents is letter no. 55 dated 23.07.2018 (copy Annexure: A21). It is a direction from the Govt. to the Director, Secondary Education. The subject of the letter is expunction of adverse entry of Sri Roop Chandra Lakhera, Lecturer, Chemistry, Govt. Inter College, Kotdidhang, District Pauri Garhwal. *Vide* letter dated 23.07.2018, representation dated 01.01.2018/ 12.04.2017 of the petitioner with documents were sent to Director, Secondary Education, with the direction that the adverse entry given to the petitioner *vide* order dated 04.04.2013 be expunged and necessary action be taken as per Rules under intimation to the Govt. by Director, Secondary Education. It appears that the Director did not abide by such letter of the Govt. The Bench tried to find out the reply of the same in the counter affidavit, but there is no specific reply to such pleadings in the W.S. Para 15 of the C.A. reads thus “..... the contents of para no. 4 (xii to xxvi) need no comment”

13. The adverse entry, as awarded to the petitioner, should therefore, be set aside on the basis of the above discussion.

14. The claim petition is disposed of by directing expunction of adverse entry from the service records of the petitioner. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 04th May, 2023
DEHRADUN
RS