

**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. 101/DB/2021**

Arun Kumar Goel, aged about 59 years, s/o Sri Pooran Mal Goel, r/o Mahadev Vihar, General Mahadev Singh Road, Dehradun, presently employed as Superintending Engineer in the office of Engineer-in-Chief, P.W.D., Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Principal Secretary, Public Works Department, Government of Uttarakhand, Secretariat, Dehradun.
2. Engineer-in-Chief and Head of Department, Public Works Department, Dehradun, Uttarakhand.
3. Chief Secretary/ Chairman Departmental Promotion Committee, Government of Uttarakhand, Secretariat, Dehradun.

..... Respondents

Present: Sri A.K. Goel, Petitioner  
Sri V.P. Devrani, A.P.O., for the Respondents

**Judgement**

**Dated: 04<sup>th</sup> July, 2022**

**Mr. RAJEEV GUPTA, VICE CHAIRMAN (A) (Oral)**

This claim petition has been filed seeking following reliefs:

“(a) That this Hon'ble Tribunal may graciously be pleased to set aside and quash the impugned special adverse entry order dated 29.10.2020

and order dated 28.01.2021 of respondent no. 1 (Annexure No. A1 and A2 of the claim petition) along with charge sheet dated 04.07.2018 (Annexure No. A8) with its effects and operation.

(b) That this Hon'ble Tribunal may graciously be pleased to issue an order or direction to the respondents to grant all consequential benefits including promotions, which are withheld and barred due to the above impugned orders dated 29.10.2020, 28.01.2021 and 04.07.2018, to the petitioner.

(c) That this Hon'ble Tribunal may graciously be pleased to issue an order or direction to the respondents no. 1 and 2 to keep abeyance of the office orders dated 12.11.2018 (Annexure No. A24) and order dated 03.06.2014 (Annexure No. A28) until the compliance of the judgement dated 08.09.2021, passed in claim petition no. 22/DB/2020, Arun Kumar Goel vs. State and others and consider the petitioner for promotion and other services avenues on the basis of his promotion on the post of Assistant Engineer w.e.f. 01.07.1990, granted by the State of Uttar Pradesh and accordingly convene the review DPC dated 25.03.2021 and consider the petitioner for promotion on the post of Chief Engineer Level-2 on the basis of eligibility and date of appointment on the post of Assistant Engineer with other persons. Further direction and order may kindly be issued to the respondents to ignore the downgraded annual confidential reports of year 2015-16 and 2016-17 (for period 01.04.2016 to 22.04.2016), 2017-18, 2018-19 and 2019-20 in the review DPC dated 25.03.2021 as the same has been recorded in the service records of the petitioner in violation of Rule 4 of the Uttarakhand Government Servant (Disposal of Representation against Adverse, Bad, Satisfactory, Good, Very Good and Outstanding Annual Confidential Reports and Allied Matters) Rules, 2015.

(d) That this Hon'ble Tribunal may graciously be pleased to issue an order or direction to the respondents to grant all consequential benefits on the post of Chief Engineer Level-2 and monetary arrears and 24 % annual penal interest on arrears from due date upto the date of payment.

(e) That this Hon'ble Tribunal may graciously be pleased to take the action against the respondents and persons who have made exploitation of the petitioner and gross injustice against the petitioner and order to respondents to extend the service of the petitioner from the due date of retirement 31.12.2022 upto the period for which the petitioner has been deprived from the fundamental right of promotion on the post of Chief Engineer Level-1 and Level-2.

(f) That this Hon'ble Tribunal may graciously be pleased to pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

(g) That this Hon'ble Tribunal may graciously be pleased to decide this petition expeditiously.

(h) That the Hon'ble Tribunal may graciously be pleased to allow this petition with cost as quantified Rs. 51,000/-."

2. Counter affidavit was filed by learned A.P.O. on behalf of respondents to which rejoinder affidavit was filed by the petitioner. Subsequently, supplementary counter affidavit has also been filed on behalf of the respondents.

3. We have heard the petitioner and learned A.P.O. and perused the record.

4. Learned A.P.O. has argued that the petitioner has sought plural reliefs while the contention of the petitioner is that the reliefs are consequential to each other.

5. The Tribunal observes that the reliefs prayed for by the petitioner fall in the following three sets:

(i) Relief relating to setting aside of the punishment order dated 29.10.2020 and the order dated 28.01.2021, by which the representation against the punishment order was rejected. These orders relate to the punishment of special adverse entry given to the petitioner for the charge sheet issued to him by Govt. letter dated 04.07.2018 about the collapse of steel girder bridge on Madanpur Naini Motor Marg in district Pithoragarh.

(ii) To ignore the downgraded Annual Confidential Report of the year 2015-16, 2016-17 (01.04.2016 to 22.06.2016), 2017-18, 2018-19 and 2019-20 and to conduct review DPC for promotion of the petitioner.

(iii) The petitioner has a long history of litigation about his seniority matter *vis-à-vis* other engineers basically arising from his seniority fixation in Uttar Pradesh and subsequently in Uttarakhand about which this Tribunal and the Hon'ble High Court have passed various orders. The petitioner seeks the relief to keep in abeyance office order dated 12.11.2018 and order dated 03.06.2014 until the compliance of judgement dated 08.09.2021, passed in claim petition no. 22/DB/2020, Arun Kumar Goel vs. State of Uttarakhand and others, and

consider the petitioner for promotion and other services avenues on the basis of his promotion on the post of Assistant Engineer *w.e.f.* 01.07.1990, as granted by the State of Uttar Pradesh and accordingly convene review DPC and grant him all consequential benefits and to take action against respondents and persons, who have done his exploitation etc.

6. Regarding his first set of reliefs, the Tribunal observes that special adverse entry could not have been granted to the claim petitioner by way of punishment as the same is not prescribed in the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, (as amended in 2010). The same has also been held in this Tribunal's judgement dated 27.05.2022 in claim petition no. 16/SB/2021, Arun Kumar Goel vs. State of Uttarakhand and another, filed by the present claim petitioner in another matter.

7. Relevant paragraphs of the abovementioned judgement of this Tribunal are reproduced herein below:

"8. In para 6 of the office memorandum dated 07.08.2020 (Annexure: A1), it has been indicated that the special adverse entry is being given to the petitioner for committing irregularity and carelessness in relation to the construction of road under Central Road Fund through e-tender, in district Pithoragarh.

9. The following are the minor and major penalties, as prescribed under Rule 3 of the Uttaranchal Government Servant (Discipline and Appeal) Rules, 2003, (for short, 'Rules of 2003'):

**"(a) Minor Penalties:**

- (i) Censure;
- (ii) Withholding of increments for a specified period;
- (iii) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of order;
- (iv) Fine in case of persons holding Group "D" posts

Provided that the amount of such fine shall in no case exceed twenty five percent of the month's pay in which the fine is imposed.

**(b) Major Penalties:**

- (i) Withholding of increments with cumulative effect;
- (ii) Reduction to a lower post or grade or time scale or to lower stage in a time scale;
- (iii) Removal from the Service which does not disqualify from future employment,

(iv) Dismissal from the Service, which disqualifies from future employment.”

**10. The Tribunal finds that special adverse entry has not been prescribed as penalty under the Rules of 2003 (as amended in 2010).**

11. The Hon’ble Apex Court has held in Civil Appeal No. 3550 of 2012, Vijay Singh vs. State of U.P. and others, that a punishment which has not been prescribed under the Rules cannot be given to the delinquent.

12. Learned A.P.O. submitted that Vijay Singh’s decision (*supra*) was based on U.P. Police Officers of Subordinate Ranks (Punishment and Appeal Rules), 1991 (hereinafter referred as the ‘Rules of 1991’) and special adverse entry has been awarded to the petitioner under different rules. The Tribunal agrees with the submission of learned A.P.O. that the rules applicable in Vijay Singh’s decision (*supra*) were the Police Rules of 1991, but the fact remains that the *ratio* of decision rendered by Hon’ble Apex Court in Vijay Singh’s case (*supra*) shall be applicable even if present case is governed by the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. The ratio is that if any punishment, which has been given to the delinquent, has not been prescribed ‘as punishment’ under the service rules, the same cannot be given. In the instant case, special adverse entry has been awarded to the petitioner after due enquiry and after holding him guilty of the charge leveled against the delinquent petitioner. In such circumstances, special adverse entry could not have been given to the petitioner as punishment.

13. Learned A.P.O., relying upon the G.O. 1712/karmik-2/2003 dated 18.12.2003 of the Personnel Department, Govt. of Uttarakhand, still submitted that special adverse entry can be awarded to an employee as punishment. Learned A.P.O. also drew attention of the Tribunal towards G.O. 1371//III(1)/20-21(sa)/2020 dated 06.11.2020 to argue that special adverse entry could be given to an employee as punishment. G.O. dated 06.11.2020 refers to the G.O. dated 08.01.2003 and 18.12.2003. It may be pointed that it is nowhere mentioned in G.O. dated 18.12.2003 that special adverse entry can be given to an employee as punishment. It will be relevant to mention here that para 11(2) of the G.O. dated 18.12.2003 has reference of censure, reprimand, warning etc. to say that the same will be deemed to be adverse entry, to be kept in the character roll of a gazetted officer.

14. Para 5 of the G.O. dated 08.01.2003 says that reprimand, warning etc., which is kept in the character roll shall be treated as adverse entry, but no G.O. anywhere says that the special adverse entry may be given as punishment. Moreover, no G.O. can prescribe anything contrary to the statutory rules, which are superior in nature.

15. G.O. dated 06.11.2020 is dependent upon the G.O. dated 08.01.2003 & G.O. dated 18.12.2003, which nowhere says that the special adverse entry may be given as a punishment. A reference of the opinion given by the Personnel Department has been given in G.O. dated 06.11.2020, which, probably, might be peculiar to the facts of the Sri N.P. Singh, Superintending Engineer and Sri Naveen Lal Sharma, Assistant Engineer, P.W.D., in whose reference such opinion was given. Thus, the Tribunal finds that special adverse entry could not have been given to the petitioner by way of punishment.”

8. Petitioner also argues that Sri K.P. Joshi, who had done the preliminary enquiry in the matter, was appointed as enquiry officer who had fixed 11.06.2019 for the petitioner's reply and for presenting his case but he submitted his enquiry report on 24.05.2019 itself as is clear from the copy of enquiry report annexed with letter dated 19.07.2019 (Annexure No. 17) addressed to the petitioner vide which his representation against the enquiry report has been sought. Though this letter dated 19.07.2019 states that the enquiry officer has submitted this enquiry report vide his letter dated 12.06.2019 but the enquiry report has been signed by the enquiry officer on 24.05.2019, the date mentioned by him below his signature. The petitioner also argues that before imposing the punishment, the Uttarakhand Public Service Commission (UKPSC) has not been consulted.

9. Learned A.P.O. argues that the petitioner was not cooperating in the enquiry and did not appear or present his case before the enquiry officer on dates fixed for the same and that UKPSC was not required to be consulted as no punishment has been given to the petitioner, instead special adverse entry has been given, which is according to the Govt. Order No. 1712/*karmik-2*/2003 dated 18.12.2003.

10. This Tribunal is unable to subscribe to the view of learned A.P.O. because the punishment order dated 29.10.2020 clearly states in the last paragraph that disciplinary proceedings against the petitioner are closed by granting special adverse entry and in the earlier parts of this order, the charges levelled against the petitioner, findings of the enquiry officer, representation of the petitioner and the charge having been proved have been mentioned. Thus, this Tribunal holds that special adverse entry has been given to the petitioner by way of punishment.

11. In view of the above, the Tribunal sets aside the order dated 29.10.2020 (Annexure No. 1) and the order dated 28.01.2021 by which the representation of the petitioner against this order was rejected and directs the respondent no. 1 to appoint another enquiry officer and

complete the disciplinary proceedings by giving proper opportunity to the petitioner to present his case and to complete the disciplinary proceedings without unreasonable delay, in accordance with law.

12. Regarding second set of reliefs mentioned at point no. (ii) of para 5 above, the petitioner argues that the entry of year 2015-16 was not communicated to him and the entry for the year 2016-17, which was for a period of less than three months (01.04.2016 to 22.06.2016) has also not been communicated to him and the entries for the years 2017-18, 2018-19 and 2019-20 were communicated to him vide letter dated 25.02.2021 (Annexure No. 27) of the Govt. asking him to send representation in this regard within the prescribed time frame, if he so desires. The petitioner further argues that time for filing the representation is 45 days and he has filed his representation against these entries well within the time on 04.04.2021 (Annexure No. 27 *colly*). This representation has not been decided yet. However, even before the expiry of time granted to him for filing the representation, the department convened a DPC meeting on 25.03.2021 and promoted three persons finding the petitioner unfit on the basis of entries. Learned A.P.O. argues that respondents have not given detailed counter affidavit on this aspect as their main objection is to the plurality of reliefs claimed in the claim petition.

13. The Tribunal holds that it is clear that the DPC has been held on 25.03.2021 without waiting for or disposing of the representation of the petitioner. The Tribunal, therefore, directs that the representation of the petitioner against these entries should be disposed of at the earliest without unreasonable delay after the production of certified copy of this order and review DPC of the petitioner, if required, may be held within a period of 01 month thereafter. It is also directed that the entries of the year 2015-16 and 2016-17 (01.04.2016 to 22.06.2016), if uncommunicated so far, be not considered against the petitioner in any manner.

14. Regarding the third set of reliefs mentioned in point no. (iii) of para 5 above, learned A.P.O. states that the respondents have not filed detailed reply on these points as the same is related to different cause of action for which the petitioner has filed many petitions in this Tribunal and Hon'ble High Court, which have been disposed of, and his contempt petition filed by him as C-04/DB/2022, is pending adjudication before this Tribunal.

15. The Tribunal agrees with the above statement of learned A.P.O. and directs that if the petitioner wants to press any fresh claim in this regard, he may file a fresh claim petition for the same, in accordance with law.

16. With the above directions, this claim petition is disposed of. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: 04<sup>th</sup> July, 2022*  
*DEHRADUN*  
*RS*