

**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. 38/DB/2021

Vivek Swaroop Srivastava, s/o Sri Jagdish Narayan Srivastava, presently posted as Finance Controller Medical Education, Srinagar Medical College, Srinagar, District- Pauri, Uttarakhand.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Finance, Secretariat, Dehradun, Uttarakhand.
2. Secretary, Department of Finance, Govt. of Uttarakhand, Secretariat, Dehradun, Uttarakhand.
3. Under Secretary, Finance, Govt. of Uttarakhand, Secretariat, Dehradun.
4. Veer Chandra Singh Garhwali Govt. Institute of Medical Science & Research, Srinagar, Uttarakhand, through its Principal.

.....Respondents.

Present: Sri Deepak Singh, Advocate, for the Petitioner.

Sri V.P.Devrani, A.P.O., for the State Respondents

JUDGMENT

DATED: FEBRUARY 23, 2022.

Justice U.C.Dhyani (Oral)

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

- (i) To quash the impugned order dated 26.08.2020, passed by respondent no.2.

(ii) Issue an order directing/commanding the respondents to strike off the special adverse entry recorded against the petitioner for the year 2020-21 by the impugned order dated 26.08.2020 passed by respondent no.2.

(iii) Issue a direction to respondent no.2 to open the envelope of the petitioner and to grant his promotion on the pay band of Rs.7600 since 01.07.2015 and consider him eligible for promotion for pay band Rs.8700/- to be held on 01.07.2021.

(iv) Quash the finding of the enquiry officer to the extent that the petitioner is in violation of Rule 3(2) of the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003.

(v) Issue a claim, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(vi) Award cost of the petition in favour of the petitioner.

(vii) To quash order dated 30.06.2021 and further be declared as void ab initio."

2. At the very outset, Ld. A.P.O. objected to the maintainability of the claim petition, *inter alia* on the ground that the same is premature in view of sub-section (6) of Section 4 of the Uttar Pradesh Public Services (Tribunal) Act, 1976. Sub-sections (5) and (6) of Section 4 read as under:

"4(5) The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances

(6) For the purposes of sub-section (5) a public servant shall be deemed to have availed of all the remedies available to him if a final order has been made by the State Government, an authority or officer thereof or other person competent to pass such order under such rules or regulations or contract rejecting any appeal preferred or representation made by such public servant in connection with the grievance:

Provided that where no final order is made by the State Government, authority, officer or other person competent to pass such order with regard to the appeal preferred or representation made by such public servant within six months from the date on which such appeal was preferred or representation was made, the public servant may, by a written notice by registered post, require such competent authority to pass the order and if the order is not passed within one month of the service of such notice, the public servant shall be deemed to have availed of all the remedies available to him."

3. Ld. A.P.O. has argued that the petitioner was required to file statutory representation against order dated 30.06.2021 under Rule 3(2) of the Uttarakhand Government Servants (Disposal of

Representation against Adverse, Fair/Satisfactory, Good, Very Good, Excellent Annual Confidential Reports and Allied Matters) Rules, 2015 which reads as under:

“3(2) A Government Servant may, within a period of 45 days from the date of communication of adverse report under sub-rule (1) represent in writing directly and also through proper channel to the authority one rank above the accepting authority hereinafter referred to as the competent authority, and if there is no competent authority to the accepting authority itself, against the adverse report so communicated:

Provided that if the competent authority of the accepting authority, as the case may be, is satisfied that the Government Servant concerned had sufficient cause for not submitting the representation within the said period, he may allow a further period of 45 days for submission of such representation.”

Such statutory representation has not yet been filed by the petitioner.

4. It is the submission of Ld. Counsel for the petitioner that order dated 26.08.2020 was passed by way of punishment, against which statutory appeal is provided under Rule 11 of the Uttaranchal Government Servant (Discipline And Appeal) Rules, 2003 (as amended in 2010) (hereinafter referred to as the Rules of 2003), which runs as below:

“11(1): Except the orders passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.

(2)....

(3)....

(4)...”

5. Ld. Counsel for the petitioner drew attention of the Tribunal towards Paragraphs 24, 25 and 42 A of the claim petition, which read as under:

“24. The Personnel Department gave the observation that the case of the petitioners to be decided by the Higher authority in view of judgment of the Hon’ble supreme Court in the matter of “Captain M. Paul Anthony vs. India Gold Mines Ltd and Others.

25. After obtaining the advice from the Personnel Department the Under Secretary of respondent department vide note sheet dated 29.03.2016 placed the matter before respondent no.2 who vide its order dated 09.04.2016 kept the departmental

proceedings against the petitioner in abeyance. The relevant extract of the note sheet is as follows:

“Note Sheet

Under Secretary

.....
It has been clarified by the personnel department vide its government order dated 21.07.2005 Page 2 that the Hon’ble Supreme Court has given the following view in the case titled “Captain M.Paul Anthony vs. India Gold Mines Ltd and Another, I.A.R., 1999 Supreme Court, 1416”:

1. The departmental proceedings and criminal proceedings can be proceeded simultaneously. There is not obstruction to conduct it simultaneously and separately.

2. If the departmental and criminal proceedings are based on similar and identical facts and charges, and criminal charges should be of grave nature containing the desired question of facts and law, then till the order of criminal case, appropriate order will be given after due consideration on the point of stay on the departmental proceedings.

3. The decision of “The criminal charge is of grave nature or not? The desired question is integrated or not?” will be taken after considering the nature of crime, the nature of matter against the employee, the evidence material against the employee during the investigation as detailed in the chargesheet.

4.

5.

It is informed about the case that Sh. Vivek Swarup has been suspended in relation to the above said charges, and chargesheet also has been served upon and the reply of the chargesheet also has been availed to the government and Mr. Swarup has been deprived for promotion in the Senior Pay band Category-1 because the proceedings of promotion will be initiated only after the decision of the Hon’ble Court.

Sd/-
Om Prakash Semwal
Section Officer
Dt. 29.03.2016

Sd/-
B.D.Belwal
Under Secretary
Dt. 29.03.2016.

42.A That the enquiry officer in his enquiry report has never recommended for granting of punishment to the petitioner, whereas on the contrary he has observed that the intention to lodge the FIR is doubtful and the matter is pending before the Hon’ble High Court, hence, the truthfulness of the allegations should depend upon the judgment of Hon’ble Court. Hence, passing of the impugned order vide which adverse entry was granted is itself illegal and liable to be quashed, however, now a subsequent act of Respondent No.2 to modify the impugned order dated 26.08.2020 by way of changing the year in which adverse entry should be read, is also illegal and liable to be quashed.”

6. The Tribunal observes that the impugned order dated 26.08.2020 is an order by which the disciplinary proceedings against the petitioner have been concluded and “Special Adverse Entry” for the year 2020-21 has been awarded to him. Subsequent order dated 30.06.2021 amends the year of this Special Adverse Entry from 2020-21 to 2014-15 as the incident pertains to the year 2014-15. Therefore, basically

the two orders are one only and are about the conclusion of the disciplinary proceedings with the punishment of "Special Adverse Entry" for the year 2014-15. Though these orders have been issued by the Secretary of the Department on his own, it is implied that these have been issued on behalf of the Government/ Governor. The Tribunal also observes that the punishment of "Special Adverse Entry" per se is not mentioned in the category of punishments/ penalties mentioned in Rule 3 of the Rules of 2003.

7. In view of the peculiar facts of the case, Ld. Counsel for the petitioner prays for and is granted liberty to file a representation, seeking review of the impugned order as provided under Rule 14 of the Rules of 2003. The delay in filing such representation is hereby condoned in the interest of justice and the respondents may take suitable decision, in accordance with law, on such representation of the petitioner, which may be filed within one month of the date of this order.
8. The claim petition is, accordingly, disposed of. No order as to costs.
9. It is made clear that the Tribunal has not expressed any opinion on the merits of the case.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: FEBRUARY 23, 2022
DEHRADUN.

VM