

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**CLAIM PETITION NO.71/SB/2024**

Naresh Kumar Haldiani, aged about 57 years, s/o Sri Mangoo Singh, the then District Education Officer (Primary Education) Chamoli, Uttarakhand.

.....**Petitioner**

**vs.**

1. The State Uttarakhand through Secretary, Education, Civil Secretariat, Dehradun.
2. Director General, School Education, Uttarakhand.
3. District Education Officer, Chamoli, Uttarakhand.

.....**Respondents**

Present: Sri Rohit Dhyani, Advocate, for the Petitioner.  
Sri V.P. Devrani, A.P.O. for the Respondents.

**JUDGMENT**

**DATED: AUGUST 18, 2025.**

**Justice U.C. Dhyani (Oral)**

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

*“I) Issue an order and direction to set aside /quash the impugned order of Adverse entry dated 03.12.2019 for year 2019-20 issued by the respondent no 2 and further order dated 03.03.2021.*

*II) Issue an order and direction to Set Aside the Punishment Order No. 66527/XXIV-2/2022-05(9)/2017 dated 29.09.2022 and implement Rule 5 of 2002 Rules negating the adverse entry.*

*III) Issue a direction penalizing the concerned competent authorities under Rule 7(1) of 2002 Rules.*

*IV) Issue any other relief, which this Hon'ble Tribunal may deem, fit and proper in the circumstances of the case be passed in favour of the petitioner.*

*V) Cost of the petition be awarded in favour of the petitioner.”*

2. Claim petition is supported by the affidavit of petitioner. Relevant documents have been filed along with the petition.

3. Claim petition has been contested on behalf of respondents. Sri Anil Kumar Pandey, Deputy Secretary, School Education, Govt. of Uttarakhand, has filed Counter Affidavit on behalf of Respondents. Relevant documents have been filed in support of Counter Affidavit.

4. Rejoinder Affidavit has been filed on behalf of the petitioner, reiterating the averments made in the claim petition, along with a document.

5. Petitioner was awarded special adverse entry for the year 2019-20 by the Director General, School Education, *vide* office order dated 03.12.2019 (Annexure No. 2). Money was to be disbursed to the students through Direct Beneficiary Transfer scheme. Imputation against the petitioner was that whereas the money was to be transferred to 33822 students, only 21156 students were disbursed such amount. Benefit was not given to 12666 students. Petitioner was awarded special adverse entry for such lapse. He filed a statutory representation, which was dismissed *vide* office order dated 29.09.2022 by the Secretary Education Govt. of Uttarakhand (Annexure No.3). Special adverse entry given to the petitioner for the year 2019-20 was affirmed. Aggrieved against the same, present claim petition has been filed.

6. Against his special adverse entry, which was communicated *vide* office order dated 03.12.2019, petitioner filed statutory representation on 01.01.2020, which was decided by the competent authority/accepting authority *vide* office order dated 29.09.2022 (Annexure No.3).

7. The question is, whether the statutory representation has been decided within time? If not so, its effect?

8. Complete mechanism has been given in the Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports And Allied Matters) Rules, 2002, which have subsequently been amended in 2015. Since it is a matter of special adverse entry, therefore, the Tribunal need not mention the provisions of amended Rules of 2015, inasmuch as it is not a matter of upgradation of downgraded entries. Rule 4(5) deals with the situation, which is existing in present claim petition. It says that 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, either rejecting the representation; or expunging the adverse report wholly or partly as he considers proper.

9. In the instant case, petitioner filed statutory representation on 01.01.2020, which was decided by the competent authority *vide* office memorandum dated 29.09.2022, which means it has been decided after approximately two years and nine months.

10. If the representation against an adverse report has not been disposed of in accordance with Rule 4, what will be the effect?

11. Rule 5 of the Rules of 2002, reads as under:

“(5) 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, crossing of Efficiency Bar and other service matters of the Government Servant concerned.

*[Emphasis supplied]*

The effect, therefore, would be that such report shall not be treated adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the Government Servant concerned.

12. Although an effort has been made by Ld. A.P.O. to defend the departmental action, by pointing out the circumstances, which caused delay in disposing of the representation on time, but the fact remains that the defense of the department is undefendable.

13. Ld. A.P.O. would draw attention of the Tribunal towards Paras 10, 11 & 12 of the C.A to submit that there were circumstances, in which the representation could not be disposed of within time. He submitted that due to the nationwide pandemic disease Covid-19, the same could not be possible. Even if there was complete lockdown and thereafter partial lockdown on account of Covid-19, present case is not the one whose limitation can be exempted by the decision rendered by Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No(s).3/2020*.

14. An issue has been raised that the adverse entry has been given by the Director General on 03.12.2019. The representation of the petitioner has been disposed of by the same person on 03.03.2021, although in the capacity of Secretary to the Government in Education Department. It may be noted here that the same person cannot sit in appeal or revision over his own decision. Therefore, the representation when moved to the Secretary to the Govt. in Education Department, was rightly entertained by the competent/ appropriate authority and was although rejected, but it is, in fact, the decision on the statutory representation of the petitioner, and not the earlier one, which has been decided by the same person. It is non est in the eye of law. Therefore, if the first representation was disposed of by the same person, although in different capacity, the same cannot be taken cognizance of legally. The representation made to and decided by the competent authority/

accepting authority, alone shall be reckoned with for the purpose of considering the limitation.

15. Since the statutory representation was not disposed of within time by the competent authority, therefore, such adverse entry shall not be treated adverse for the purposes of promotion, crossing of Efficiency Bar and other service matters of the petitioner. Impugned orders are interferable to this extent.

16. The claim petition is, accordingly, disposed of with the direction that the statutory representation against adverse report dated 03.02.2019, as affirmed by the competent authority *vide* order dated 29.09.2022, was since not disposed of within time, therefore, such report shall not be treated adverse for the purpose of promotion, crossing of Efficiency Bar and other service matters of the petitioner, as has been laid down in Rule 5 of the Uttaranchal Government Servants (Disposal of Representation Against Adverse Annual Confidential Reports And Allied Matters) Rules, 2002 (as amended in 2015).

No order as to costs.

**(ARUN SINGH RAWAT)**  
VICE CHAIRMAN (A)

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

*DATE: AUGUST 18, 2025*  
*DEHRADUN*

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